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1890

**AN ABRIDGMENT
OF
THE REVISED STATUTES**

OF THE STATE OF NEW YORK (State) *Law, etc.*

TOGETHER WITH THE
OTHER STATUTORY PROVISIONS
OF

**A GENERAL AND PERMANENT NATURE,
EXCEPT THE CODE OF CIVIL PROCEDURE, THE
CODE OF CRIMINAL PROCEDURE,
AND THE PENAL CODE,**

PASSED FROM THE YEAR 1778 TO FEB. 1. 1889, AND NOW IN FORCE,

BEING SELECTIONS FROM SAID STATUTES

DESIGNED FOR THE USE OF STUDENTS.

NEW YORK AND ALBANY:
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PREFACE.

THE object of this abridgment is to put into one volume those parts of the Eighth Edition of the Revised Statutes of New York that are likely to be referred to by students. The original paging is preserved, and the Analysis and Index are the same as in the full four volume edition. This will enable the student to find out about matter not embraced in the abridgment and will show him in what part of the full edition it can be found.

ANALYSIS

OF THE SEVERAL CHAPTERS, TITLES AND ARTICLES EMBRACED IN THIS EDITION OF THE REVISED STATUTES, WHICH CONTAINS THE SAID REVISED STATUTES, AND ALL OTHER STATUTORY PROVISIONS OF A GENERAL AND PERMANENT CHARACTER, *

AS IN FORCE FEBRUARY 1, 1889,

EXCEPT THE CODE OF CIVIL PROCEDURE, THE CODE OF CRIMINAL PROCEDURE, AND THE PENAL CODE.

[MEMORANDUM.—The analysis of the Revised Statutes, as originally enacted, is preserved in the following pages, without any alterations, other than those required to conform the same to express enactments repealing, or changing the captions of, particular chapters, titles, or articles. That portion of this analysis is printed in Roman type; those portions which relate to enactments not forming a part of the Revised Statutes, are printed in italics. In the left hand column is preserved the original paging of the R. S.]

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impairing obligation of contracts.....	1	10	appropriations of.....	1	9
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limited.....	11th amend.		Names of members to be entered on journal.....	1	5
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Laws of the Union, how enforced.....	1	8	New states, may be admitted..	4	3
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Legislatures of states to choose senators.....	1	3	for warrants of arrest....	4th amend.	
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to act on amendments....	5		senator and representative ineligible to.....	1	6
members to take oath....	6		eligibility to.....	2	1
Letters of marque and reprisal, when granted.....	1	8	removal from.....	2	1
			oath of.....	2	1
			Officers of house of representatives.....	1	2
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of accused in criminal cases	6th amend.		public acts and records of	4	1
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how chosen.....	1	4	over	1	8
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	Art.	Sec.		Art.	Sec.
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treason against.....	3	3	to be confronted with accused	6th amend.	
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			Writings, exclusive right in....	1	8
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CONSTITUTION

OF THE

UNITED STATES OF AMERICA.

[Went into operation on the first Wednesday of March, 1789. Owings v. Speed, 5 Wh., 420.]

WE, the people of the United States, in order to form a more perfect Preamble.
union, establish justice, ensure domestic tranquillity, provide for the
common defense, promote the general welfare, and secure the blessings
of liberty to ourselves and our posterity, do ordain and establish this
constitution for the United States of America:¹

ARTICLE I.

SECTION 1.

1. All legislative powers, herein granted, shall be vested in a congress Legislative
of the United States, which shall consist of a senate and house of repre- power.
sentatives.

SECTION 2.

1. The house of representatives shall be composed of members chosen House of
every second year by the people of the several states; and the electors in representatives;
each state shall have the qualifications requisite for electors of the most its
numerous branch of the state legislature. members;
by whom
chosen.

2. No person shall be a representative who shall not have attained to Qualifica-
the age of twenty-five years, and been seven years a citizen of the United tion of
States, and who shall not, when elected, be an inhabitant of that state in members.
which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the Apportion-
several states which may be included within this Union, according to ment of
their respective numbers; which shall be determined by adding to the representatives
and direct
taxes.

the whole number of free persons, including those bound to service for a Census.
term of years, and excluding Indians not taxed, three-fifths of all other
persons. The actual enumeration shall be made within three years after

the first meeting of the congress of the United States, and within every Number of
subsequent term of ten years, in such manner as they shall by law direct. representa-
tives.

The number of representatives shall not exceed one for every thirty First ap-
thousand, but each state shall have at least one representative; and until portion-
ment.
such enumeration shall be made, the state of New Hampshire shall be
entitled to choose three, Massachusetts eight, Rhode Island and Providence
Plantations one, Connecticut five, New York six, New Jersey four,
Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North
Carolina five, South Carolina five, and Georgia three.²

¹ 2 Del., 471; 1 Wh., 294; 3 Wh., 181; 4 Wh., 404; 6 Wh., 414; 12 Wh., 455; 5 Pet., 128; 6 Pet., 269; 13 How., 107; 1 Brook., 177; 2 Brook., 109; 6 Call., 277; 7 J. Ch., 297; 16 J. R., 233; 17 J. R., 126; 19 J. R., 153; 4 N. Y., 276; 20 W., 366; 3 Cow., 713.
² 3 Del., 171; 5 Wh., 217.

Vacancies.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Officers.
Power of
impeach-
ment.

5. The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

SECTION 3.

Senate.

1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Classifica-
tion of
senators.

2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

Vacancies.

Qualifica-
tions.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

President
of the sen-
ate.

4. The vice-president of the United States shall be president of the senate, but shall have no vote unless they be equally divided.

Officers
and presi-
dent *pro*
tem.

5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

Trial of im-
peach-
ments.

6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment
on im-
peach-
ment.

7. Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4.

Election of
senators
and repre-
sentatives.

1. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Annual
meeting of
congress.

2. The congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SECTION 5.

Powers of
each house.

1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.¹

¹ 80 N. Y., 117.

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.¹

Power to make rules and expel members.

3. Each house shall keep a journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Journals.

Yeas and nays.

4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Adjournments.

SECTION 6.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.²

Compensation to members of congress.
Privileges.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Exclusion from certain offices.

SECTION 7.

1. All bills, for raising revenue, shall originate in the house of representatives; but the senate may propose, or concur with, amendments as on other bills.

Revenue bills.

2. Every bill, which shall have passed the house of representatives and the senate, shall, before it becomes a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections, at large, on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Manner of passing bills.
Approval by president.

Reconsideration.

His omission to return it.

3. Every order, resolution or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States; and, before the same shall take effect, shall be approved by him; or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.³

Concurrent orders, resolutions, &c.

¹ 1 Dal., 226; 6 Wh., 204; 1 Am. L. J., 139; 459.

² 2 Dal., 473; 4 Dal., 107.

³ 6 Op., 660. (This abbreviation stands for Opinions of the attorney-general.)

SECTION 8.

General
powers of
congress.
Taxation.

The congress shall have power:

1. To lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

Loans.

2. To borrow money on the credit of the United States.

Commerce.

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

Naturaliza-
tion.
Bankrupt-
cies.

4. To establish an uniform rule of naturalization; and uniform laws on the subject of bankruptcies throughout the United States.

Coin.
Weights
and meas-
ures.

5. To coin money, regulate the value thereof, and of foreign coin; and fix the standard of weights and measures.

Counter-
feiting.
Post-offices
and roads.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

Patent and
copy
rights.

7. To establish post-offices and post-roads.

Courts.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

Piracies,
&c.

9. To constitute tribunals inferior to the supreme court.

War.

10. To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

Army.

11. To declare war; grant letters of marque and reprisal, and make rules concerning captures on land and water.

Navy.

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

Articles of
war.

13. To provide and maintain a navy.

Militia.

14. To make rules for the government and regulation of the land and naval forces.

Organizing
militia.

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions.

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress.

Exclusive
legislation.

17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular states and the acceptance of congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state, in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings; and

¹⁵ Wh., 317; 9 Wh., 199.

¹⁶ Pet., 449.

¹⁷ Wh., 112; Wh., 419; 9 Pet., 250; 11 Pet., 102; 12 Pet., 72; 5 How., 504; 7 How., 283; 8 How., 73, 490; 12 How., 299; 14 How., 553; 18 How., 71, 421; 4 Wash., 378; 1 McL., 324; 5 McL., 426; 6 McL., 70, 209, 237, 518; 1 Op., 556; 2 Op., 426; 9 J. R., 507; Hop., 149; 3 Cow., 718; 6 Cow., 169; 7 Cow., 319; 1 H., 499; 4 D., 469; 1 Wend., 193; 15 Wend., 113; 19 Wend., 547; 26 Barb., 270; 1 Robt., 201; 3 Abb. Ct. App. Dec., 541; 50 N. Y., 131, 35; 5 Abb. N. C., 368; 76 N. Y., 475; 28 Hun, 594; 29 Hun, 461.

¹⁸ Dal., 372; 3 Wash., 314; 9 Wh., 259; 4 Wh., 123, 209; 6 Wh., 181; 12 Wh., 413, 370; 6 Pet., 348; 635; 9 Pet., 339; 14 Pet., 67; 5 How., 236, 585; 7 How., 556; 6 Cow., 497; 8 B., 429; 4 N. Y., 293.

¹⁹ 4 Lou. R., 90; 5 How., 410; 9 How., 560; 49 Barb., 521.

²⁰ 18 How., 421; 3 McL., 398.

²¹ 6 Pet., 218; 8 Pet., 501; 1 How., 202; 6 How., 436; 15 How., 213; 3 Sum., 535; 1 Blatch., 266; 5 McL., 158; 3 B. Ch., 320; 8 W., 562; 3 N. Y., 9; 30 Hun, 196.

²² 1 Pet., 546.

²³ 5 Wh., 153.

²⁴ 8 Cr., 110; 58 Barb., 155; 48 Barb., 260.

²⁵ 58 Barb., 155.

²⁶ 12 Wh., 19.

²⁷ 5 Wh., 1; 19 Johns. R., 7.

²⁸ 6 Lans., 44; 5 Wh., 317; 6 Wh., 264; 6 Op., 577; 7 Op., 625; 17 Johns. R., 235.

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers; and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.¹

Laws for carrying out vested powers.

SECTION 9.

1. The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.²

Slave trade.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Habeas corpus.
Attainder and *ex post facto* law.

3. No bill of attainder or *ex post facto* law shall be passed.³

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.⁴

Direct taxes.

5. No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear, or pay duties in another.⁵

State exports.

Port entries.

6. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Receipts and expenditures.

7. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign state.

Titles and presents prohibited.

SECTION 10.

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.⁶

Powers forbidden to the states individually.

¹ 4 Wh., 316.

² 5 Wh., 338; 9 Wh., 381, 391; 10 Wh., 67; 12 Wh., 460; 1 Wash., 95, 499, 523; 2 Sum., 240; 3 Pet., 63; 11 Pet., 73; 14 Pet., 464; 14 Pet., 518.

³ 3 Dal., 390; 6 Cr., 138; 8 Pet., 110; 17 How., 463; 2 Gall., 138; 2 Wash., 366; Pet., C. C., 323; 66 Barb., 158; 60 Barb., 397; 49 N. Y., 510.

⁴ 3 Dal., 171; 5 Wh., 320.

⁵ 12 How., 313; 18 How., 421.

⁶ (Impairing the obligation of contracts.)

U. S. Courts.—6 Cr., 87, 136; 7 Cr., 174; 9 Cr., 43; 4 Wh., 122, 518; 5 Wh., 420; 6 Wh., 131; 8 Wh., 1; 12 Wh., 213, 370; 9 Pet., 412; 3 Pet., 239; 4 Pet., 410, 614; 5 Pet., 457; 6 Pet., 343; 6 Pet., 40, 116; 9 Pet., 329; 11 Pet., 257; 1 How., 315; 2 How., 608; 3 How., 133, 534; 6 How., 301, 507; 7 How., 279; 8 How., 163; 40 How., 190, 376, 395, 402, 511; 11 How., 185; 13 How., 12; 14 How., 80; 15 How., 304; 16 How., 108, 369, 416; 17 How., 234, 456; 18 How., 331, 330, 334; 20 How., 22, 327; 2 Pa., 74; 1 Sum., 276; Pet. C. C., 322; 2 Gall., 141; 1 McL., 628; 3 McL., 397; 6 McL., 386; 4 Wall., 143, 409, 535; 3 Wall., 53, 210; 2 Wall., 10, 217; 1 Wall., 116; 15 Wall., 478; 4 Otto, 415.

NEW YORK.—3 J. C., 75; 7 J. C. R., 297; 7 J. R., 477; 16 J. R., 233; 17 J. R., 106, 195; 19 J. R., 153; 5 Cow., 538; 7 Cow., 349, 585; 8 Cow., 146, 543; 9 Cow., 344; 4 W., 9; 16 W., 436; 20 W., 363; 22 W., 543; 23 W., 192; 1 H., 324; 2 H., 491; 6 H., 33; 1 D., 128; 3 D., 274, 564; 1 Pal., 102; 3 Pal., 45; 11 Pal., 93, 484; 3 B., 621; 4 B., 9, 29; 5 B., 471; 6 B., 327; 8 B., 353, 502; 9 B., 202, 492; 10 B., 223; 13 B., 63; 14 B., 405, 559; 15 B., 318, 627; 16 B., 189; 17 B., 119, 660; 18 B., 159; 23 B., 33; 24 B., 87, 129; 25 B., 457; 27 B., 445; 1 N. Y., 129; 2 N. Y., 245; 4 N. Y., 376; 5 N. Y., 283; 7 N. Y., 500; 11 N. Y., 281, 308; 12 N. Y., 202; 13 N. Y., 269; 14 N. Y., 23; 15 N. Y., 190; 16 N. Y., 68, 116; 21 How., P. R., 137; 1 Lam., 274; 64 N. Y., 107; 70 N. Y., 569; 71 N. Y., 513; 61 How., Fr. R., 290; 10 J. & S., 325; 63 N. Y., 202; 66 N. Y., 129; 63 How., Fr. R., 363; 16 Hun, 283; 46 Barb., 349; 9 Hun, 623; 16 Abb., N. S., 123; 4 T. & C., 365; 2 Hun, 556; 67 N. Y., 169; 10 J. & S., 325; 24 Hun, 519; 40 Hun, 31; 41 Hun, 410; 42 Hun, 638; 69 N. Y., 66; 60 N. Y., 48; 107 N. Y., 563; 45 Hun, 519; 43 Hun, 614.

MAINE.—2 Shep., 344; 6 Shep., 109; 25 Mal., 18; 26 Mal., 191; 34 Mal., 411; 36 Mal., 9; 40 Mal., 386; 44 Mal., 140.

NEW HAMPSHIRE.—4 Post., 139; 11 N. H., 19; 25 N. H., 457.

VERMONT.—11 Verm., 683; 12 Verm., 403, 525; 19 Verm., 86; 25 Verm., 303.

MASSACHUSETTS.—1 Mass., 138; 5 Mass., 88; 6 Mass., 509; 8 Mass., 430; 10 Mass., 337; 13 Mass., 18; 6 Pick., 461; 8 Pick., 194; 12 Pick., 572; 15 Pick., 417; 19 Pick., 48; 2 Gray, 1,339; 4 Gray, 474.

CONNECTICUT.—3 Conn., 263, 364, 472, 523; 5 Conn., 1; 6 Conn., 490; 9 Conn., 314; 13 Conn., 37; 21 Conn., 351.

State
powers,
with con-
sent of con-
gress.

2. No state shall, without the consent of the congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.¹

ARTICLE II.

SECTION 1.

President.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and together with the vice-president, chosen for the same term, be elected as follows:²

Vice-presi-
dent.

Mode of
election.

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States shall be appointed an elector.

NEW JERSEY.—1 Sou., 192; 2 Sou., 466; 4 Za., 385.
PENNSYLVANIA.—6 S. & R., 323; 1 Raw., 181; 2 Wha., 395; 2 W. & S., 156; 5 W. & S., 171, 418; 3 Penn., 23, 184; 4 Penn., 49; 5 Penn., 145; 6 Penn., 86, 196, 379; 9 Penn., 401; 11 Penn., 489; 13 Penn., 133, 400; 15 Penn., 44; 24 Penn., 229; 28 Penn., 189; 33 Penn., 94.
DELAWARE.—4 Harr., 389, 440; 5 Harr., 454.
MARYLAND.—4 G. & J., 1, 509; 7 G. & J., 7; 9 G. & J., 365; 10 G. & J., 392; 8 Gil., 445; 9 Gil., 299; 1 Md., 351.
VIRGINIA.—4 Gil., 221; 9 Grat., 788.
OHIO.—1 Ham., 236; 1 Oh., 591, 622; 2 Oh., 152; 5 Oh., 444; 7 Oh., 431; 16 Oh., 12, 599.
ILLINOIS.—1 Bre., 16; 12 Il., 1; 14 Il., 142; 17 Il., 344; 20 Il., 209.
KENTUCKY.—1 Lit., 326; 4 Lit., 34, 53; 1 Mon., 24; 5 Mon., 98, 109, 129; 7 Mon., 11, 544, 588; 7 B. Mon., 168; 12 B. Mon., 144; 13 B. Mon., 1, 150; 14 B. Mon., 428; 15 B. Mon., 613.
TENNESSEE.—Peck, 1; 2 Yer., 534; 9 Yer., 490; 4 Hum., 13; 7 Hum., 84, 130; 8 Hum., 1; 1 Sn., 63, 115, 548, 637; 3 Sn., 609.
INDIANA.—1 Blackf., 220; 6 Blackf., 373; 7 Ind., 59, 157, 470; 9 Ind., 37, 359; 11 Ind., 43, 543.
MICHIGAN.—1 Doug., 225; 2 Doug., 38, 197; 1 Man., 68.
WISCONSIN.—1 Wis., 26; 4 Wis., 414.
IOWA.—1 Mor., 27, 59, 70; 1 Io., 533; 2 Io., 94; 3 Io., 489.
NORTH CAROLINA.—1 Ire., 414; 10 Ire., 496; 13 Ire., 75.
SOUTH CAROLINA.—2 Rich., 43; 3 R., 389; 10 R., 604.
GEORGIA.—Cha., 175, 324; 2 Geo., 143; 4 Geo., 203; 7 Geo., 163; 9 Geo., 213; 10 Geo., 190; 12 Geo., 437; 13 Geo., 1, 306; 15 Geo., 496; 16 Geo., 102; 19 Geo., 170; 22 Geo., 606; 23 Geo., 51; 24 Geo., 356.
ALABAMA.—2 St., 30; 7 Port., 298; 1 Al., 313; 2 Al., 401; 9 Al., 718; 11 Al., 472; 12 Al., 369; 15 Al., 521; 23 Al., 168; 29 Al., 573; 30 Al., 120; 31 Al., 532; 32 Al., 839; 713.
MISSISSIPPI.—4 How. M., 647; 3 S. & M., 661; 4 S. & M., 439; 6 S. & M., 599; 8 S. & M., 9; 9 S. & M., 310; 10 S. & M., 351; 12 S. & M., 347; 13 S. & M., 645.
MISSOURI.—9 Mi., 389, 507; 13 Mi., 112; 23 Mi., 107; 24 Mi., 85, 377, 396; 25 Mi., 535; 26 Mi., 47, 441; 27 Mi., 517; 31 Mi., 679.
LOUISIANA.—12 La., 364, 432, 515; 13 La., 502.
FLORIDA.—4 Fl., 23; 5 Fl., 345.
TEXAS.—1 Tex., 250, 598; 5 Tex., 349; 6 Tex., 347; 7 Tex., 348; 11 Tex., 696; 14 Tex., 52, 235.
CALIFORNIA.—1 Cal., 55; 2 Cal., 361, 524; 4 Cal., 127; 5 Cal., 188; 7 Cal., 1, 479, 579, 8 Cal., 52; 9 Cal., 81.
ARKANSAS.—2 Eng., 150; 3 Eng., 236; 4 Eng., 206; 17 Ark., 518; 19 Ark., 360.
(Bills of credit,) 43 Hun., 517.
(*Ex post facto* laws.)
30 N. Y., 429; 3 Dal., 386; 13 Wh., 377; 2 Pet., 380, 414, 492, 627, 681; 8 Pet., 88, 110; 11 Pet., 420; 3 How., 707; 1 Bald., 74; 2 Gall., 106, 139; 1 McL., 85; 2 McL., 186; 3 Pa., 74, 501; 7 J. R., 477; 18 J. R., 138; 3 Cow., 347; 8 Cow., 542; 9 Cow., 664; 7 B., 249; 15 N. Y., 451; 22 N. Y., 96; 49 N. Y., 510; 2 Greenl., 28, 63, 275; 2 Fairt., 284; 6 Shep., 109; 10 Shep., 318, 535; 43 Mal., 429; 2 N. H., 102; 3 N. H., 473, 524; 4 N. H., 16, 573; 10 N. H., 880; 3 Verm., 174, 617; 3 Verm., 380; 4 Verm., 289; 13 Verm., 582; 1 Chip., 237; 1 Ark., 121; 4 Conn., 210; 6 Conn., 54, 190; 7 Conn., 350, 550, 558; 2 Root, 350; 4 Mass., 390; 8 Mass., 472; 9 Mass., 373; 11 Mass., 396; 16 Mass., 16, 36, 59, 76, 215; 2 Pick., 163, 172; 5 Pick., 63; 6 Pick., 501; 11 Pick., 28; 1 Gray, 163; 5 Rh. Is., 159, 497; 5 Binn., 355; 6 Binn., 271; 7 S. & R., 260; 10 S. & R., 97; 11 S. & R., 191; 12 S. & R., 330; 14 S. & R., 435; 15 S. & R., 72; 16 S. & R., 35, 169; 3 Wa., 294; 6 Wa., 449; 4 W. & S., 218, 401; 8 W. & S., 49; 23 Penn., 507; 31 Penn., 289; 1 Yer., 399; 2 Yer., 125, 200, 554, 599; 4 Yer., 202; 5 Yer., 330; 6 Yer., 119; 2 Swan., 85; Harp., 88; 5 Mon., 123, 133; 1 J. J. M., 563; 4 Bibb, 63; 16 B. Mon., 15; 1 Blackf., 196, 220; 3 Blackf., 8; 7 Blackf., 474; 7 Ind., 316; 9 Ham., 66; 8 Ham., 533; 5 Oh., 225; 12 Oh., 364; 15 Oh., 408; 5 Hayw., 263; 3 Ran., 188; 3 Grat., 632; 1 Const. R., 90; 3 Hill S. C., 96; 1 McM., 410; 5 Walk., 269; 5 How., 285; 9 G. & J., 181; 13 Md., 196; 17 Geo., 568; 4 Tex., 470; 14 Tex., 402; 4 Dutch., 18; 3 Dutch., 185; 1 Jon., 9; 30 Al., 120; 4 Cal., 127; 13 La., 268; 17 Ark., 407; 96 N. Y., 38.
¹ 14 Pet., 573; 1 McL., 188; 3 Op., 661; 3 Ab. Ct. Ap. Dec., 541; 4 T. & C., 365; 4 Otto, 415; 67 N. Y., 109; 70 N. Y., 327; 8 Abb. N. C., 467; 10 Daly, 258; 11 Daly, 133.
² 6 Op., 603.

3. [The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose, by ballot, one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice-president.]

Annulled.
See 12th
amend-
ment.

4. The congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

Time of
election.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Qualifica-
tions of the
president.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the congress may, by law, provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president; and such officer shall act accordingly until the disability be removed, or a president shall be elected.

Vacancies,
how sup-
plied.

7. The president shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

His com-
pensation.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States."¹

Oath of
office.

SECTION 2

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he

Powers of
President.

¹ 4 Wall, 475.

shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.¹

Treaties. 2. He shall have power by and with the advice and consent of the senate to make treaties, provided two-thirds of the senators present concur; and he shall nominate and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law. But the congress may, by law, vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law or in the heads of departments.²

**Appoint-
ments.**

Vacancies. 3. The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session.³

SECTION 3.

His duties. He shall, from time to time, give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both houses or either of them; and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.⁴

SECTION 4.

**Impeach-
ments.** The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.⁵

ARTICLE III.

SECTION 1.

Judiciary. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, ordain and establish.

**Tenure
and com-
pensation.** The judges, both of the supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.⁶

SECTION 2.

**Judicial
power.** 1. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, or other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state, claiming lands under grants of different states; and between a state, or the citizens thereof, and foreign states, citizens, or subjects.⁷

¹ 7 Pet., 150; 18 How., 307; 4 Wash., 64; 1 Op., 341, 482; 2 Op., 329; 3 Op., 317, 418, 622; 4 Op., 144, 458, 573; 5 Op., 338, 533, 579, 729; 6 Op., 20, 383, 615; 7 Op., 561; 4 Wall., 280.

² 1 Cr., 155; 13 Pet., 230; 3 Op., 188, 673; 4 Op., 1, 218, 603; 5 Op., 238; 7 Op., 186.

³ 1 Op., 631; 2 Op., 338, 525; 3 Op., 673; 4 Op., 30, 361, 523.

⁴ 4 Op., 243; 5 Op., 287; 6 Op., 220, 500.

⁵ 4 Whart. S. T. 260, 316; Blount's Tr., 22; Peck's Tr., 56; 3 Op., 409.

⁶ 9 Wh., 738; 1 Pet., 511; 8 How., 448; 52 N. Y., 96.

⁷ 2 Dal., 297; 4 Dal., 10, 321; 2 Cr., 406, 445; 4 Cr., 306, 443; 5 Cr., 303; 7 Cr., 506; 9 Cr., 298; 1 Wh., 9, 91; 2 Wh., 577; 3 Wh., 212, 336; 4 Wh., 1, 108, 438; 6 Wh., 264; 8 Wh., 464; 9 Wh., 409, 738;

2. In all cases affecting ambassadors, or other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the congress shall make.¹ Jurisdiction of supreme court.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trials shall be held in the state where the said crimes shall have been committed; but when not committed within any state the trial shall be at such place or places as the congress may by law have directed.² Trial of crimes.

SECTION 3.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.³ Treason.

2. The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted. Punishment.

ARTICLE IV.

SECTION 1.

Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof.⁴ State records.

SECTION 2.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.⁵ Privilege of citizens.

2. A person charged, in any state, with treason, felony or other crime, who shall flee from justice and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.⁶ Fugitives from justice.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party, to whom such service or labor may be due.⁷ Fugitives from labor.

SECTION 3.

1. New states may be admitted by the congress into this Union, but no new state shall be formed or erected within the jurisdiction of any New states.

¹ 11 Wh., 467; 2 Pet., 136; 3 Pet., 433; 5 Pet., 1; 6 Pet., 761; 7 Pet., 324; 12 Pet., 616, 657; 15 Pet., 393; 2 How., 497; 3 How., 245; 5 How., 343, 441; 6 How., 163, 344; 8 How., 441; 12 How., 448; 13 How., 513; 16 How., 314; 19 How., 393; 3 Wash., 546; 4 Wash., 101, 371, 453, 631; 1 Pet. Ad., 327; 2 Sum., 401; 3 Curt., 322, 435; 1 Pa., 620; 2 Pa., 103; 2 Gall., 398; Gilp., 473; 3 McL., 570; 4 McL., 13, 132; 6 McL., 590; 4 J. C., 430; 17 J. R., 4; 3 H., 159; 7 Rob., 377; 65 Barb., 430; 75 N. Y., 538; 82 N. Y., 93; 84 N. Y., 1; 71 N. Y., 413; 18 Hun., 56; 24 Hun., 187.

² 3 Dal., 297; 4 Dal., 331; 1 Cr., 137; 1 Wh., 304; 6 Wh., 264; 9 Wh., 738; 11 Wh., 467; 6 Pet., 41; 5 How., 176; 14 How., 103; 4 Wash., 190, 344, 531; 6 W., 327; 10 W., 50; 1 B., 449; 5 B., 115; 7 N. Y., 578.

³ 1 Curt., 33, 49; Bald., 516; 2 Sum., 240.

⁴ 4 Cr., 76; Burr's Tr.; Wha. St. T., 480; 1 Dal., 33, 35, 39; 3 Dal., 83, 88, 335, 346, 349; 4 Cr., 75; 3 Wash., 234; 11 J. R., 549; 30 Hun., 336; 90 N. Y., 502.

⁵ 3 Wh., 234; 6 Wh., 129; 9 How., 528; 7 Cr., 484; Crabbe, 185; 10 S. & R., 242; 3 Wash., 17; 3 Pa., 503; 7 W. & S., 447; 3 J. C. R., 565; 12 N. Y., 156; 18 N. Y., 86; 60 Barb., 112; 65 Barb., 270; 9 Hun., 632; 40 Hun., 616; 101 N. Y., 33.

⁶ 19 How., 393; 18 How., 591; 2 Pa., 503; 4 Wash., 330; 4 Am. L. R., 19; 5 Law R., 493; 2 Munf., 393; 20 B., 66; 4 J. C. R., 115; 1 Pal., 183; 19 W., 11; 35 Hun., 390.

⁷ 3 Za., 311; 13 Geo., 97; 9 W., 221; 6 Penn. L. J., 428; 1 Am. L. J., 231; 10 S. & R., 125; 6 Har., 39; 3 McL., 133; 14 Pet., 540; 7 Verm., 121; 5 Binn., 617; 2 Miss., 36; 2 Brock., 433; 5 Met., 536; 12 Verm., 631; 5 How., 176; 3 McL., 121; 1 B., 248; 5 Cal., 237; 7 Ind., 611; 4 Za., 634; 9 Tex., 635; 1 Pa., 429; 14 How., 103; 3 Cart., 306; 4 Har., 573, 577; 56 N. Y., 187; 30 Hun., 336.

⁸ 5 How., 215; 10 How., 33; 14 How., 13; 19 How., 396; 16 Pet., 539; 1 Wash., 499; 4 Wash., 337; 3 McL., 539, 631; 4 McL., 402; 5 McL., 44, 92, 469; 6 McL., 259, 273; 2 Pa., 348; 13 W. 811; 16 B., 268; 25 B., 370; 1 Pal., 183; 1 Am. L. R., 634; 3 Op., 370; 6 Op., 362; 3 S. & R., 4; 10. B. Mon., 438; 16 B. Mon., 123; 11 Il., 332; 1 Curt., 23; 2 Curt., 153; 33 Al., 133; 10 Barr., 514; 1 Mor., 1; 1 Sn., 91; 8 Wis., 1, 157; 7 Cush., 235; 1 Cart., 303; 9 Hum., 639, 739; 1 Smith, 256; 1 Ed. S. Cases, 321.

other state, nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

Territories.

2. The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.¹

SECTION 4.

Republican form of government.
86 Hun, 420.

The United States shall guarantee to every state in this Union, a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

Amendments.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner, affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI.

Debts of the confederacy.

1. All debts contracted and engagements entered into before the adoption of this constitution shall be as valid against the United States, under this constitution, as under the confederation.

Supreme law.

2. This constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.²

Oath of office.
No religious test.

3. The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

Ratification.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and Deputy from Virginia.

¹ 1 Pet., 542; 14 Pet., 526; 16 How., 191; 19 How., 395; 1 McL., 454; 1 Pa., 646; 4 Op., 487; 2 Wall., 160.

² 5 Cr., 348; 2 Pet., 253; 16 How., 635; 4 Am. L. R., 804; 6 Op., 291; 1 Blatch., 635; 2 Curt., 454; 1 Wash., 322; 1 B., 248; 1 Hun, 696; 41 N. Y., 403; 57 Barb., 431; 59 N. Y., 659; 1 Otto, 29; 3 N. Y. Crim. R., 68; 35 Hun, 517.

CONSTITUTION OF THE UNITED STATES.

29

NEW HAMPSHIRE

John Langdon,
Nicholas Gilman.

MASSACHUSETTS.

Nathaniel Gorham,
Rufus King.

CONNECTICUT.

Wm. Saml. Johnson.,
Roger Sherman.

NEW YORK.

Alexander Hamilton.

NEW JERSEY.

Wil. Livingston,
David Brearly,
Wm. Patterson.
Jona. Dayton.

PENNSYLVANIA.

B. Franklin,
Thos. Mifflin,
Robt. Morris,
Geo. Clymer,
Tho. Fitzsimmons,
Jared Ingersol,
James Wilson,
Gouv. Morris.

DELAWARE.

Geo. Read,
Gunning Bedford, Jr.,
John Dickinson,
Richard Basset,
Jaco. Broom.

MARYLAND.

James McHenry,
Dan. of St. Thos. Jenifer,
Danl. Carroll.

VIRGINIA.

John Blair,
James Madison, Jr.
NORTH CAROLINA.

Wm. Blount,
Rich'd Dobbs Spaight,
Hu. Williamson.

SOUTH CAROLINA.

J. Rutledge,
Charles Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.

GEORGIA.

William Few,
Abr. Baldwin.

Attest : WILLIAM JACKSON, *Secretary.*

[The following extract from the journals of congress, shows the adoption of the constitution, and the time when it took effect.]

IN CONGRESS,

SATURDAY, September 13, 1788.

On the question to agree to the following proposition, it was resolved in the affirmative by the unanimous votes of nine states, viz., of New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, South Carolina, and Georgia.

WHEREAS, The convention assembled in Philadelphia, pursuant to the resolution of congress of the 21st of February, 1787, did, on the 17th of September in the same year, report to the United States in congress assembled, a constitution for the people of the United States; whereupon congress, on the 28th of the same September, did resolve unanimously, "that the said report, with the resolutions and letter accompanying the same, be transmitted to the several legislatures, in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case:" and whereas the constitution so reported by the convention, and by congress transmitted to the several legislatures, has been ratified in the manner therein declared to be sufficient for the establishment of the same, and such ratifications duly authenticated have been received by congress, and are filed in the office of the secretary; therefore,

The constitution declared to be ratified.

Resolved, That the first Wednesday in January next be the day for appointing electors in the several states, which before the said day shall have ratified the said constitution; that the first Wednesday in February next be the day for the electors to assemble in their respective states, and vote for a president: and that the first Wednesday in March next be the time, and the present seat of congress the place, for commencing proceedings under the said constitution.

Federal government to go into operation on the 4th of March, 1789.

CONSTITUTION OF THE UNITED STATES.

When ratified by the several states.

The constitution was ratified by the conventions of the several states, as follows:

- By Delaware on the 7th December, 1787.
 " Pennsylvania on the 12th December, 1787.
 " New Jersey on the 18th December, 1787.
 " Georgia on the 2d January, 1788.
 " Connecticut on the 9th January, 1788.
 " Massachusetts on the 6th February, 1788
 " Maryland on the 28th April, 1788.
 " South Carolina on the 23d May, 1788.
 " New Hampshire on the 21st June, 1788.
 " Virginia on the 26th June, 1788.
 " New York on the 26th July, 1788.
 " North Carolina on the 21st November, 1789.
 " Rhode Island on the 29th May, 1790.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

[The following amendments were proposed at the first session of the first congress of the United States, which was begun and held in the city of New York, on the 4th of March, 1789, and were adopted by the requisite number of states. 1 vol. Laws U. S., p. 72.]

[The following preamble and resolution preceded the original proposition of the amendments, and as they have been supposed by a high equity judge (8th Wendell's Reports, p. 100) to have an important bearing on the construction of those amendments, they are here inserted. They will be found in the journals of the first session of the first congress.]

CONGRESS OF THE UNITED STATES.

Begun and held at the city of New York on Wednesday the 4th of March, 1789.

The convention of a number of states having, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the government, will best insure the beneficent ends of its institution.

Resolved, By the senate and house of representatives of the United States of America in congress assembled, two-thirds of both houses concurring, that the following articles be proposed to the legislatures of the several states, as amendments to the constitution of the United States; all or any of which articles, when ratified by three-fourths of the said legislatures, to be valid to all intents and purposes, as part of the said constitution, namely:]

ARTICLE I.

Freedom of religion, of speech, of the press, and right of petition.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

Right to bear arms.

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

Quartering of troops.

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

Searches and seizures. Warrants.

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

1 3 Cr., 448; 6 Binn., 316; 18 How., 71, 272; 1 Op., 229; 2 Op., 266; 4 Wh., 100.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.¹

Trials for crimes.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.²

Rights in criminal cases.

ARTICLE VII.

In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.³

Trials in civil cases.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.⁴

Bail, fines, &c.

ARTICLE IX.

The enumeration, in the constitution, of certain rights shall not be construed to deny or disparage others retained by the people.⁵

Reserved rights.

ARTICLE X.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states, respectively, or to the people.

Powers reserved.

[The foregoing ten amendments were ratified as follows:

- By New Jersey, 20th November, 1789.
- “ Maryland, 19th December, 1789.
- “ North Carolina, 22d December, 1789.
- “ South Carolina, 19th January, 1790.
- “ New Hampshire, 25th January, 1790.
- “ Delaware, 28th January, 1790.
- “ Pennsylvania, 10th March, 1790.
- “ New York, 27th March, 1790.
- “ Rhode Island, 15th June, 1790.
- “ Vermont, 3d November, 1791.
- “ Virginia, 15th December, 1791.

¹ 9 Wh., 579; 4 Wash., 402; 9 Sum., 19; 1 Wal. R. J., 127; Bald., 220; 12 S. & R., 231; 2 Cow., 685; 2 Cow., 815; 8 W., 35; 7 Pet., 243, 551; 5 How., 434; 18 How., 373; 3 Bl., 510; 39 N. Y., 181; 1 Ab. Ct. Ap. Dec., 237-207.
² 9 Wh., 579; Wall., 108; 1 Burr. Tr., 179; 10 W., 449; 2 N. Y. Crim. R. 51; 35 Hun, 516; 43 Hun, 108.
³ 1 Pet., 409, 476; 3 Pet., 423; 6 Pet., 598; 3 Dal., 297; 11 How., 437; Bald., 544; 5 McIl., 509; 2 Fa., 243, 578; 12 Harr., 229; 1 Gall., 30; 24 W., 137.
⁴ 20 J. R., 459; 12 S. & R., 230; 3 Cow., 688.
⁵ 1 W. & M., 401; 3 S. & R., 120.

[The following was proposed by the congress held in Philadelphia on 2d December, 1788, and was declared by a message from the president, dated 8th January, 1790, to have been adopted by the constitutional number of states.]

ARTICLE XI.

Limitation
of judicial
power.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.¹

[The following was proposed at the first session of the 8th Congress held in Washington, 17th October, 1803, and was declared, by a notice of the secretary of state, dated 26th September, 1804, to have been adopted by the constitutional number of states.]

ARTICLE XII.

Election of
president
and vice-
president.

The electors shall meet in their respective states, and vote, by ballot, for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose, immediately by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice.

President.

And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

Vice-presi-
dent.

The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president, shall be eligible to that of vice-president of the United States.

When not
eligible.

ARTICLE XIII.

[Proposed by Congress, February 1, 1865; ratification announced by secretary of state, Dec. 16, 1865.]

Slavery
abolished.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Power of
congress.

§ 2. Congress shall have power to enforce this article by appropriate legislation.

¹ 3 Pet., 431; 7 Pet., 627; 11 Pet., 324; 5 Cr. 115; 6 Wh., 264; 9 Wh., 904; 2 How., 497, 550; 15 How., 12; 16 How., 309; 1 B. C. R., 157.

ARTICLE XIV.

[Proposed by Congress, June 16, 1868; ratification announced by secretary of state, July 25, 1868.]

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Citizens of U. S.
93 N. Y., 488;
99 N. Y., 386;
35 Hun., 392;
Id., 523.

§ 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive or judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Representatives, how apportioned among the states.

§ 3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

Who not to be senator or M. C.
93 N. Y., 511.

§ 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Public debt not to be questioned.

Insurrectionary debt not to be assumed.

§ 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV.

[Proposed by congress, February 27, 1869; ratification announced by secretary of state, March 30, 1870.]

SECTION 1. The right of citizens of the United States to vote, shall not be denied or abridged by the United States or by any state, on account of race, color, or previous condition of servitude.

Right to vote not to be denied or abridged

§ 2. The congress shall have power to enforce this article by appropriate legislation.

Power of congress to enforce.

THE CONSTITUTION

OF THE

STATE OF NEW YORK,

NOW IN FORCE; BEING THE CONSTITUTION OF 1846, WITH THE AMENDMENTS
TO JANUARY 1, 1889.

WE, THE PEOPLE of the State of New York, grateful to Almighty God
for our Freedom, in order to secure its blessings, DO ESTABLISH THIS
CONSTITUTION.

ARTICLE I.

No person
to be dis-
franchised.

SECTION 1. No member of this state shall be disfranchised, or deprived
of any of the rights or privileges secured to any citizen thereof, unless by
the law of the land, or the judgment of his peers.'

Trial by
jury.

§ 2. The trial by jury in all cases in which it has been heretofore used,
shall remain inviolate forever; but a jury trial may be waived by the
parties in all civil cases in the manner to be prescribed by law.'

Religious
liberty.

§ 3. The free exercise and enjoyment of religious profession and wor-
ship, without discrimination or preference, shall forever be allowed in
this state to all mankind; and no person shall be rendered incompetent
to be a witness on account of his opinions on matters of religious belief;
but the liberty of conscience hereby secured shall not be so construed as
to excuse acts of licentiousness, or justify practices, inconsistent with the
peace or safety of this state.'

Writ of
habeas
corpus.

§ 4. The privilege of the writ of *habeas corpus* shall not be suspended,
unless when, in cases of rebellion or invasion, the public safety may re-
quire its suspension.'

Bail, fines.

§ 5. Excessive bail shall not be required nor excessive fines imposed,
nor shall cruel and unusual punishments be inflicted, nor shall witnesses
be unreasonably detained.'

¹ 50 N. Y., 280; 16 Johns. R., 233; 17 Johns. R., 108, 195, 295; 19 Johns. R., 153; 20 Johns. R., 313;
7 Johns. C. R., 297; 1 Cow., 450; 3 Cow., 713; 4 Wend., 9; 10 Wend., 547; 18 Wend., 9; 20 Wend.,
385; 21 W., 563; 24 W., 215, 337; 26 W., 43; 3 Paige, 45; 6 Paige, 137; 6 Paige, 554; 11 Paige,
454; 1 Barb. Ch. R., 547; 5 Hill, 317, 468; 6 H., 47; 8 D., 381; 3 B., 196; 4 B., 56; 9 B., 350; 14
B., 405, 559; 18 B., 583; 24 B., 232, 248, 446; 27 Barb., 575; 1 N. Y., 536; 3 N. Y., 511; 4 N. Y., 276;
6 N. Y., 176; 7 N. Y., 9, 109; 9 N. Y., 100; 12 N. Y., 541; 13 N. Y., 378; 16 N. Y., 501; 17 N. Y., 235;
18 N. Y., 38; 22 N. Y., 128; 49 N. Y., 280; 55 N. Y., 60, 367; 59 N. Y., 451, 525, 553; 67 N. Y., 227; 68
N. Y., 202; 1 Abb. N. C., 1; 68 N. Y., 381; 70 N. Y., 361; 5 Abb. N. C., 338.

² 1 Cow., 550; 6 Hill, 47; 3 D., 382; 4 D., 374; 15 W., 436; 20 W., 265; 8 Cow., 543; 3 B., 196; 4 B.,
64; 13 N. Y., 383; 14 N. Y., 423; 19 N. Y., 445; 39 N. Y., 426; 50 N. Y., 281; 6 Lans., 44; 60 N. Y., 451;
27 Hun, 180; 32 Hun, 394; 36 Hun, 409, 496; 38 Hun, 198; 40 Hun, 22, 194, 230; 42 Hun, 188; 3 Edm.
Sel. Cases, 381; 2 N. Y. Crim. R., 155; 3 N. Y. Crim. R., 206; 4 Id., 123; 90 N. Y., 386; 100 N. Y., 409.

³ 2 Cow., 815; 1 H., 355; 6 H., 75; 5 W., 251, 468; 8 W., 85; 10 W., 449; 3 Pal., 45; 24 W., 537; 10
B., 35; 14 B., 425; 18 B., 412; 20 B., 625; 13 N. Y., 378; 16 N. Y., 501; 18 N. Y., 199; 27 N. Y., 148;
39 B., 115; 17 A., 4; 43 N. Y., 52; 44 N. Y., 555; 45 N. Y., 473; 45 N. Y., 233; 51 N. Y., 305; 74 N. Y.,
392, 406; 1 Abb. N. C., 1; 11 Hun, 195, 358; 18 Hun, 274; 20 Hun, 462; 16 Hun, 43, 426; 74 N. Y.,
495; 11 J. & S., 411; 23 Hun, 374, 431; 8 Hun, 21; 4 Abb. Ct. Ap. Dec., 486; 62 Barb., 21; 61 Barb.,
27; 61 Barb., 465; 460 How. Pr. R., 162; 17 Abb. Pr. R., 5; 11 Abb. Pr. R., (N. S.), 35; 4 Rob., 311;
4 Rob., 464; 59 N. Y., 83, 92; 3 Hun, 306; 6 Hun, 140; 45 How. Pr., 97; 13 Abb. N. C., 128; 3 N.
Y. Crim. R., 61; 25 Hun, 221; 27 Hun, 185; 43 Hun, 132; 103 N. Y., 143.

⁴ 18 J. R., 98; 2 Cow., 432; 43 Hun, 397.

⁵ 50 N. Y., 458; 32 Hun, 594.

⁶ 13 N. Y., 378.

§ 6. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service; and the land and naval forces in time of war, or which this state may keep, with the consent of congress in time of peace; and in cases of petit larceny, under the regulation of the legislature), unless on presentment or indictment of a grand jury; and in any trial in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel as in civil actions. No person shall be subject to be twice put in jeopardy for the same offence; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.¹

Bill of rights.

§ 7. When private property shall be taken for any public use the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by a jury or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.²

Private property and roads.

§ 8. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.³

Freedom of speech and the press.

§ 9. The assent of two-thirds of the members elected to each branch of the legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes.⁴

Two-thirds bills.

§ 10. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof, nor shall any divorce be granted, otherwise than by due judicial proceedings; nor shall any lottery hereafter be authorized or any sale of lottery tickets allowed within this state.⁵

Right to petition.
Divorces.
Lotteries.

¹ 2 J. C. R. 162; 20 J. R. 103; 3 Pal., 45; 5 Pal., 137; 7 Pal., 538; 4 Wend., 9; 10 Wend., 449; 21 Wend., 148; 14 Wend., 54; 15 Wend., 374, 451; 17 Wend., 649; 18 Wend., 9; 19 Wend., 664; 20 Wend., 363; 24 Wend., 65; 25 Wend., 461; 4 Cow., 195; 5 Cow., 348; 7 Cow., 585; 2 D., 272; 1 H., 324; 3 H., 567; 4 H., 140; 6 H., 47; 3 Barb., 275, 459; 4 Barb., 64, 295; 5 Barb., 471; 7 Barb., 297, 418, 508; 8 Barb., 358; 9 Barb., 449, 350; 14 Barb., 405; 15 Barb., 255, 627; 18 Barb., 619, 159; 19 Barb., 118, 166, 179; 21 Barb., 513; 24 Barb., 233, 658; 25 Barb., 9; 3 N. Y., 511; 4 N. Y., 195, 419; 5 N. Y., 285; 6 N. Y., 358, 522; 7 N. Y., 314; 8 N. Y., 241; 9 N. Y., 100; 11 N. Y., 308; 12 N. Y., 209, 486; 13 N. Y., 378, 143; 18 N. Y., 88, 199; 19 N. Y., 116; 20 N. Y., 416; 24 How. P. R., 389, 388; 45 N. Y., 358; 37 N. Y., 270; 55 N. Y., 31; 55 N. Y., 693; 54 N. Y., 182; 54 N. Y., 523; 58 N. Y., 255; 50 N. Y., 280, 525; 49 N. Y., 587; 48 N. Y., 313; 46 N. Y., 441; 61 Barb., 623; 55 Barb., 413; 6 Lans., 45; 47 How. Pr. R., 513; 74 N. Y., 183; 17 Hun, 561; 56 How. Pr. R., 80; 11 J. & S., 292; 20 Hun, 402; 3 Abb. N. C., 306; 70 N. Y., 327; 64 N. Y., 292, 547; 60 N. Y., 242; 72 N. Y., 1; 68 N. Y., 1, 167; 73 N. Y., 330; 66 N. Y., 413, 569; 63 N. Y., 336; 70 N. Y., 223; 67 N. Y., 563; 5 J. & S., 539; 56 N. Y., 374; 52 N. Y., 80, 131; 5 Hun, 297, 475, 483; 57 N. Y., 473; 44 How. Pr., 334; 56 N. Y., 533; 60 N. Y., 116, 242; 63 Barb., 437; 4 Hun, 201; 54 N. Y., 528; 20 Hun, 402; 12 Abb. N. C., 124; 18 id., 187; 16 id., 395; 26 Hun, 156; 27 Hun, 151, 180, 537; 28 Hun, 158, 170, 515; 29 Hun, 646; 30 Hun, 98; 31 Hun, 83, 199, 209; 32 Hun, 577, note; 34 Hun, 382; 35 Hun, 571; 36 Hun, 24, 407, 491; 37 Hun, 541; 38 Hun, 198; 39 Hun, 223, 404, 424, 490; 40 Hun, 22, 190, 230; 42 Hun, 186; 43 Hun, 407; 44 Hun, 162, 181, 472, 493; 90 N. Y., 48, 122; 92 N. Y., 128, 142; 93 N. Y., 97; 94 N. Y., 490; 96 N. Y., 42, 175, 237; 99 N. Y., 302, 377, 484, 569; 100 N. Y., 403; 101 N. Y., 439; 102 N. Y., 176, 471; 104 N. Y., 229, 396, 213; 22 J. & S. 117; 106 N. Y., 293; 105 N. Y., 76, 123, 590; 107 N. Y., 329, 563; 107 N. Y., 427, rev'd 45 Hun, 460; 103 N. Y., 10, 43, 388.

² 20 J. R., 375; 8 Wend., 85; 4 H., 140; 5 H., 168; 7 H., 9; 3 Barb., 532; 8 Barb., 486; 12 Barb., 446; 15 Barb., 517; 18 Barb., 451; 4 N. Y., 419; 7 N. Y., 486; 9 N. Y., 100; 11 N. Y., 313; 12 N. Y., 150; 27 N. Y., 308; 43 Barb., 198; 42 Barb., 265; 50 N. Y., 525; 39 N. Y., 173; 56 N. Y., 374; 54 N. Y., 523; 53 N. Y., 255; 60 Barb., 137; 63 Barb., 282; 10 Hun, 91; 5 Hun, 175; 63 N. Y., 136; 11 J. & S., 292; 62 N. Y., 580; 1 Hun, 268; 69 N. Y., 368; 18 J. & S., 318; 16 Abb. N. C., 336; 29 Hun, 325; 34 Hun, 447; 35 Hun, 578; 37 Hun, 541; 39 Hun, 426; 82 N. Y., 196; 99 N. Y., 569; 19 Abb. N. C., 247.

³ 26 Wend., 383; 2 H., 249; 31 How. Pr. R., 421; 26 Hun, 396; 37 Hun, 450.
⁴ 4 H., 384; 2 D., 380; 14 Barb., 563; 18 Barb., 620; 8 N. Y., 334; 54 N. Y., 276; 42 N. Y., 378; 47 How. Pr. R., 512; 1 N. Y. S. C. R. (T. & C.), 283; 64 N. Y., 91; 33 Hun, 222; 99 N. Y., 533.

⁵ 7 N. Y., 228; 26 Hun, 396; 43 Hun, 619; 1 Daly, 1, 82.

Eminent
domain.

§ 11. The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail, from a defect of heirs, shall revert, or escheat to the people.'

Feudal
tenures.

§ 12. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving however all rents and services certain which at any time heretofore have been lawfully created or reserved.

All lands
allodial.

§ 13. All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

Certain
leases lim-
ited.

§ 14. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.'

Fines and
quarter
sales abol-
ished.

§ 15. All fines, quarter sales, or other like restraints upon alienation reserved in any grant of land, hereafter to be made, shall be void.'

Certain
purchases
from Indi-
ans void.

§ 16. No purchase or contract for the sale of lands in this state made since the fourteenth day of October, one thousand seven hundred and seventy-five, or which may hereafter be made, of, or with the Indians, shall be valid, unless made under the authority, and with the consent of the legislature.'

Parts of the
common
law, acts
and sta-
tutes de-
clared to be
law.

§ 17. Such parts of the common law and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred seventy-seven, which have not since expired, or been repealed or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated; and the legislature, at its first session after the adoption of this constitution, shall appoint three commissioners, whose duty it shall be to reduce into a written and systematic code the whole body of the law of this state, or so much and such parts thereof as to the said commissioners shall seem practicable and expedient: And the said commissioners shall specify such alterations and amendments therein as they shall deem proper, and they shall at all times make reports of their proceedings to the legislature, when called upon to do so; and the legislature shall pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of the said commissioners and shall also provide for the publication of the said code, prior to its being presented to the legislature for adoption.'

Code.

Grants of
land by the
king of
Great
Britain
void.

§ 18. All grants of land within this state, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this constitution shall effect any grants of land within this state, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of

Certain
rights not
affected.

¹ 8 Wend., 183; 17 Wend., 312; 6 N. Y., 522; 3 N. Y., S. C. R. (T. & C.), 235.

² 23 Barb., 606; 6 N. Y., 457; 41 N. Y., 490; 76 N. Y., 301; 63 N. Y., 524.

³ 6 N. Y., 467.

⁴ 20 J. R., 693; 7 N. Y., 401, 428; 3 N. Y., S. C. R. (T. & C.), 235.

⁵ 56 N. Y., 445; 8 N. Y., 525; 54 Barb., 483; 39 Barb., 115; 7 Paige, 77; 4 N. Y. Crim. R., 104; 33 Hun, 586, note; 92 N. Y., 408, 481.

property, or any suits, actions, rights of action, or other proceedings in courts of justice.¹

ARTICLE II.

* § 1. Every male citizen of the age of twenty-one years who shall have been a citizen for ten days and an inhabitant of this state one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.²

Qualifica-
tion of
electors.

* § 2. No person who shall receive, expect or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature, at the session thereof next after the adoption of this section shall, and from time to time thereafter may, enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.³

Persons
excluded
from right
of suffrage.

Challenge.

Laws to be
passed ex-
cluding
from right
of suffrage.

§ 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any alms-house, or other asylum, at public expense; nor while confined in any public prison.⁴

Certain
employ-
ments not
to affect
residence
of voters.

§ 4. Laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established.

Proofs of
right to
vote.

§ 5. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

Election to
be by bal-
lot.

¹ 9 N. Y., 349; 10 Barb., 120.

² 50 N. Y., 455; 29 N. Y., 425; 42 Hun, 116.

³ 29 N. Y., 455; 45 N. Y., 514.

⁴ 45 Hun, 116; 107 N. Y., 55.

* As amended by vote of the people, Nov. 3, 1874. Went into effect January 1, 1875.

ARTICLE III.

Legislative powers. SECTION 1. The legislative power of this state shall be vested in a senate and assembly.¹

Senate, number of. § 2. The senate shall consist of thirty-two members, and the senators shall be chosen for two years. The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

Assembly, number of. § 3. The state shall be divided into thirty-two districts, to be called senatorial districts, each of which shall choose one senator. The districts shall be numbered from one to thirty-two inclusive.*

Senatorial districts. District number one (1) shall consist of the counties of Suffolk, Richmond and Queens.

No. 1. District number two (2) shall consist of the county of Kings.

No. 2. District number three (3), number four (4), number five (5), and number six (6) shall consist of the city and county of New York. And the board of supervisors of said city and county shall, on or before the first day of May, one thousand eight hundred and forty-seven, divide the said city and county into the number of senate districts, to which it is entitled, as near as may be of an equal number of inhabitants, excluding aliens and persons of color not taxed, and consisting of convenient and contiguous territory; and no assembly district shall be divided in the formation of a senate district. The board of supervisors, when they shall have completed such division, shall cause certificates thereof, stating the number and boundaries of each district and the population thereof, to be filed in the office of the secretary of state, and of the clerk of said city and county.

No. 7. District number seven (7) shall consist of the counties of Westchester, Putnam and Rockland.

No. 8. District number eight (8) shall consist of the counties of Dutchess and Columbia.

No. 9. District number nine (9) shall consist of the counties of Orange and Sullivan.

No. 10. District number ten (10) shall consist of the counties of Ulster and Greene.

No. 11. District number eleven (11) shall consist of the counties of Albany and Schenectady.

No. 12. District number twelve (12) shall consist of the county of Rensselaer.

No. 13. District number thirteen (13) shall consist of the counties of Washington and Saratoga.

No. 14. District number fourteen (14) shall consist of the counties of Warren, Essex and Clinton.

No. 15. District number fifteen (15) shall consist of the counties of St. Lawrence and Franklin.

No. 16. District number sixteen (16) shall consist of the counties of Herkimer, Hamilton, Fulton and Montgomery.

No. 17. District number seventeen (17) shall consist of the counties of Schoharie and Delaware.

No. 18. District number eighteen (18) shall consist of the counties of Otsego and Chenango.

No. 19. District number nineteen (19) shall consist of the county of Oneida.

No. 20. District number twenty (20) shall consist of the counties of Madison and Oswego.

¹ 18 Wend., 9; 21 id., 563; 1 Hill, 324; 5 Hill, 131; 15 Barb., 112, 123; 23 Barb., 355, 33; 8 N. Y., 488; 10 N. Y., 374; 12 N. Y., 541; 19 N. Y., 445; 55 id., 361, 367, 613; 53 id., 245; 56 N. Y., 295; 7 Lans., 215; 57 N. Y., 177; 4 T. & C., 365, 381; 56 N. Y., 261; 2 Hun, 475; 50 N. Y., 461; 5 Hun, 626; 11 Hun, 610; 71 N. Y., 527; 70 N. Y., 287; 63 N. Y., 202, 239; 5 Abb. N. C., 1; 9 Hun, 153; 7 J. & S., 192; 64 N. Y., 362; 74 N. Y., 95; id., 161; id., 216; id., 500; 67 N. Y., 528; 1 Sheld., 517; 66 N. Y., 129; 66 N. Y., 88; 4 Hun, 92; 32 Hun, 580.

* For the existing senate districts, see chapter 206, laws of 1879, post.

District number twenty-one (21) shall consist of the counties of Jeffer- No. 21.
son and Lewis.

District number twenty-two (22) shall consist of the county of Onon- No. 22.
daga.

District number twenty-three (23) shall consist of the counties of Cort- No. 23.
land, Broome and Tioga.

District number twenty-four (24) shall consist of the counties of Cayuga No. 24.
and Wayne.

District number twenty-five (25) shall consist of the counties of Tomp- No. 25.
kins, Seneca and Yates.

District number twenty-six (26) shall consist of the counties of Steuben No. 26.
and Chemung.

District number twenty-seven (27) shall consist of the county of Mon- No. 27.
roe.

District number twenty-eight (28) shall consist of the counties of Or- No. 28.
leans, Genesee and Niagara.

District number twenty-nine (29) shall consist of the counties of Ontario No. 29.
and Livingston.

District number thirty (30) shall consist of the counties of Allegany No. 30.
and Wyoming.

District number thirty-one (31) shall consist of the county of Erie. No. 31.

District number thirty-two (32) shall consist of the counties of Chau- No. 32.
taqua and Cattaraugus.

§ 4. An enumeration of the inhabitants of the state shall be taken, under the direction of the legislature, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature, at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and persons of color not taxed; and shall remain unaltered until the return of another enumeration, and shall at all times consist of contiguous territory; and no county shall be divided in the formation of a senate district, except such county shall be equitably entitled to two or more senators.

Census,
when to be
taken.

Senate
districts
altered.

To remain
unaltered.

* § 5. The assembly shall consist of one hundred and twenty-eight members, elected for one year. The members of assembly shall be apportioned among the several counties of the state, by the legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens, and shall be chosen by single districts. The assembly districts shall remain as at present organized, until after the enumeration of the inhabitants of the state, in the year eighteen hundred and seventy-five. The legislature, at its first session after the return of every enumeration, shall apportion the members of assembly among the several counties of the state, in manner aforesaid, and the board of supervisors in such counties as may be entitled under such apportionment, to more than one member, except the city and county of New York, and in said city and county the board of aldermen of said city shall assemble at such time as the legislature making such apportionment shall prescribe, and divide their respective counties into assembly districts, each of which districts shall consist of convenient and contiguous territory, equal to the number of members of assembly to which such counties shall be entitled, and shall cause to be filed in the offices of the secretary of state and the clerks of their respective counties a description of such districts, specifying the number of each district and the population thereof, according to the last preceding

Members of
assembly,
number of,
and how
appor-
tioned and
chosen.

Boards of
supervisors
in certain
counties,
and board
of alder-
men in N.
York city
to divide
the same
into assem-
bly dis-
tricts.
Descrip-
tion of as-
sembly dis-
tricts to be
filed.

¹ 19 N. Y., 55; 20 N. Y., 447; 45 N. Y., 814; 90 N. Y., 68.

² For the existing apportionment of members of assembly, see chapter 208, laws of 1879, post.

³ As amended by vote of the people, November 3, 1874. Went into effect Jan. 1, 1875.

Members
to be re-
apportioned.
Districts to
be altered.

To remain
unaltered.

Each county
entitled to
one member
except
Hamilton.

Hamilton
to elect
with Ful-
ton.

Pay of
members.

Mileage.

No mem-
ber to re-
ceive civil
appoint-
ment.

Persons
disqualified
from being
members.

Time of
annual
election.

Powers of
each house.
Contested
seats.

Journals to
be kept.

Freedom
in debate.

enumeration as near as can be ascertained, and the apportionment and districts shall remain unaltered until another enumeration shall be made as herein provided. No town shall be divided in the formation of assembly districts. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of the assembly, and no new county shall be hereafter erected, unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, be entitled to a member. But the legislature may abolish the said county of Hamilton, and annex the territory thereof to some other county or counties. Nothing in this section shall prevent division at any time of counties and towns, and the erection of new towns and counties by the legislature.¹

*§ 6. Each member of the legislature shall receive for his services an annual salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel, in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.¹

*§ 7. No member of the legislature shall receive any civil appointment within this state, or the senate of the United States, from the governor, the governor and senate, or from the legislature, or from any city government during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointment shall be void.¹

*§ 8. No person shall be eligible to the legislature who, at the time of his election; is, or within one hundred days previous thereto has been, a member of congress, a civil or military officer under the United States, or any officer under any city government; and if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof shall vacate his seat.

§ 9. The elections of senators and members of assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the legislature.

§ 10. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the senate shall choose a temporary president, when the lieutenant-governor shall not attend as president, or shall act as governor.²

§ 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

§ 12. For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.

¹ 19 N. Y., 41; 20 N. Y., 447; 2 Abb. Ct. Ap. Dec., 534; 21 Wend., 563; 19 Barb., 41.

² 8 N. Y., 324; 3 Cow., 656; 20 N. Y., 117; 23 Hun, 586; 26 N. Y., 533.

³ As amended by vote of the people, Nov. 3, 1874. Went into effect Jan. 1, 1875.

§ 13. Any bill may originate in either house of the legislature, and all bills passed by one house may be amended by the other.

§ 14. The enacting clause of all bills shall be "The People of the State of New York, represented in senate and assembly, do enact as follows," and no law shall be enacted except by bill.¹

§ 15. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.²

§ 16. No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title.³

* § 17. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.⁴

* § 18. The legislature shall not pass a private or local bill in any of the following cases:

- Changing the names of persons.
- Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands.
- Locating or changing county seats.
- Providing for changes of venue in civil or criminal cases.
- Incorporating villages.
- Providing for the election of members of boards of supervisors.
- Selecting, drawing, summoning or impaneling grand or petit jurors.
- Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed.

Granting to any corporation, association or individual the right to lay down railroad tracks.

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the general term of the supreme court, in the district in which it is proposed to be constructed, may,

Bills may originate in either house. Enacting clause of bills.

Majority of members elected required to pass bills.

Private or local bills.

Existing law not to be made a part of an act except by inserting it therein. Private and local bills, in what cases they may not be passed.

General laws to be passed.

Street railroads, condition upon which they may be authorized.

¹ 35 How. Pr. R., 50; 102 N. Y., 475.

² 37 Barb., 575, 584; 8 N. Y., 394; 31 How. Pr. R., 299.

³ 43 N. Y., 186; 50 N. Y., 553; 49 N. Y., 183; 43 N. Y., 410; 56 N. Y., 261; 52 N. Y., 651; 35 N. Y., 449; 29 N. Y., 116; 16 N. Y., 58; 8 N. Y., 241; 5 N. Y., 225; 61 Barb., 463; 54 Barb., 485; 32 Barb., 634; 19 Barb., 81; 15 Barb., 637; 3 Barb., 162; 44 How. Pr. R., 376; 45 How. Pr. R., 153; 47 How. Pr. R., 509, 520; 13 Abb. Pr. R. (N. S.), 131; 1 N. Y. S. C. R. (T. & C.), 311; 3 id., 235; 4 id., 378; 49 N. Y., 133; 50 N. Y., 504; id., 635; 59 N. Y., 323; id., 518; 59 N. Y., 83; 70 N. Y., 327; 60 N. Y., 507; 1 Hun, 563; 3 Hun, 97; 4 T. & C., 87; id., 365, 373; 13 Abb. N. S., 121; 6 J. & S., 492; 47 How. Pr. R., 420; 48 How. Pr., 457; 74 N. Y., 95; 75 N. Y., 186; 79 N. Y., 279; 93 Hun, 208; 56 N. Y., 261; 67 N. Y., 568; 2 N. Y. Crim. R., 246; 3 id., 318; 16 Abb. N. C., 390; 37 Hun, 19; 29 Hun, 70; 31 Hun, 428, 516; 33 Hun, 268; 36 Hun, 24, 496; 39 Hun, 234; 43 Hun, 124, 614; 52 N. Y., 196; 56 N. Y., 1, 487, 623; 59 N. Y., 67, 393; 61 N. Y., 616; 64 N. Y., 116, 191; 64 N. Y., 197; 66 N. Y., 227; 69 N. Y., 532, 569; 101 N. Y., 11, 159, 306; 102 N. Y., 54; 107 N. Y., 125, 328, 593.

⁴ 39 Hun, 86; 53 Hun, 323; 34 Hun, 456; 37 Hun, 60; 39 Hun, 223; 67 N. Y., 569; 96 N. Y., 158; 101 N. Y., 9, 183, 294; 103 N. Y., 43; 107 N. Y., 593.

* Sections 17 to 25, both inclusive, added by vote of the people, Nov. 3, 1874. Went into effect Jan. 1, 1875.

upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.'

The legislature not to audit or allow any private claim. Bill imposing a tax, manner of passing. Same subject.

*§ 19. The legislature shall neither audit nor allow any private claim or account against this state, but may appropriate money to pay such claims as shall have been audited and allowed according to law.'

*§ 20. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.'

*§ 21. On the final passage, in either house of the legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.'

Board of supervisors.

*§ 22. There shall be in the several counties, except in cities whose boundaries are the same as those of the county, a board of supervisors, to be composed of such members, and elected in such manner, and for such period, as is or may be provided by law. In any such city the duties and powers of a board of supervisors may be devolved upon the common council or board of aldermen thereof.

Local legislative powers conferred on boards of supervisors. No extra compensation to be granted to a public officer, servant, agent, or contractor. Sections seventeen and eighteen not to apply to certain bills. Executive power.

*§ 23. The legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the state such further powers of local legislation and administration as the legislature may from time to time deem expedient.'

*§ 24. The legislature shall not, nor shall the common council of any city nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor.'

§ 25. Sections seventeen and eighteen of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the legislature by commissioners who have been appointed pursuant to law to revise the statutes.'

ARTICLE IV.

*SECTION 1. The executive power shall be vested in a governor, who shall hold his office for three years; a lieutenant-governor shall be chosen at the same time, and for the same term. The governor and lieutenant-governor elected next preceding the time when this section shall take effect shall hold office during the term for which they were elected.

Qualifications of governor.

*§ 2. No person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years, next preceding his election, a resident of this state.

Election of governor and lieutenant-governor.

§ 3. The governor and lieutenant-governor shall be elected at the times and places of choosing members of the assembly. The persons respectively having the highest number of votes for governor and lieu-

¹ 5 Abb. N. C., 383; 70 N. Y., 327, 361; 75 N. Y., 335; 3 Abb. N. C., 467, 476; 67 N. Y., 569; 12 Daly, 108, 504; 13 Daly, 252; 26 Hun, 492; 27 Hun, 582; 28 Hun, 469, 476; 29 Hun, 303, 391, 626; 30 Hun, 98, 396; 31 Hun, 72; 32 Hun, 82; 33 Hun, 220, 332; 34 Hun, 422; 37 Hun, 446; 38 Hun, 223; 39 Hun, 223; 40 Hun, 20, 190; 41 Hun, 425; 42 Hun, 477, 621; 46 N. Y., 1; 59 N. Y., 75; 92 N. Y., 1, 123; 93 N. Y., 313; 93 N. Y., 135; 96 N. Y., 158; 93 N. Y., 146, 535; 99 N. Y., 538, 569; 102 N. Y., 48, 843, 471; 107 N. Y., 42, aff'g 42 Hun, 621; 107 N. Y., 159.

² 39 N. Y., 68; 102 N. Y., 48.

³ 6 Lans., 92; 27 Hun, 168; 36 Hun, 486; 92 N. Y., 311; 100 N. Y., 565; 104 N. Y., 306; 106 N. Y., 104; 105 N. Y., 76, 560.

⁴ 64 N. Y., 276; 1 T. & C., 280; 56 N. Y., 290; 4 T. & C., 365; 93 N. Y., 313.

⁵ 18 N. Y., 143; 8 N. Y., 472; 47 How. Fr. E., 464; 7 Hun, 53; 28 Hun, 476; 33 Hun, 222; 92 N. Y., 1; 99 N. Y., 538.

⁶ 26 Hun, 508; 33 Hun, 574; 89 N. Y., 53; 102 N. Y., 48.

⁷ 30 Hun, 98; 92 N. Y., 128.

⁸ As amended by vote of the people, Nov. 3, 1874. Went into effect January 1, 1875.

tenant-governor, shall be elected; but in case two or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature, at its next annual session, shall, forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor or lieutenant-governor.

*§ 4. The governor shall be commander-in-chief of the military and naval forces of the state. He shall have power to convene the legislature (or the senate only) on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the governor may recommend for consideration. He shall communicate by message to the legislature at every session the condition of the state, and recommend such matters to them as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall receive for his services an annual salary of ten thousand dollars, and there shall be provided for his use a suitable and furnished executive residence.¹

Powers and duties of governor.

Compensation.

§ 5. The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted; stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

Pardoning power.

§ 6. In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the state.²

When powers of governor devolve on lieutenant-governor.

§ 7. The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the senate, but shall have only a casting vote therein. If during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president of the senate shall act as governor until the vacancy be filled, or the disability shall cease.

Qualifications, powers and duties of lieutenant-governor.

*§ 8. The lieutenant-governor shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite for any duty or service he may be required to perform by the constitution or by law.

Compensation of lieutenant-governor.

*§ 9. Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that house shall

Bills to be presented to the governor for signature. If returned by him with objections, how disposed of.

¹ 50 N. Y., 288; 59 Barb., 195.

² 3 N. Y. Crim R. 241; 36 Hun, 98

³ As amended by vote of the people, November 3, 1874. Went into effect January 1, 1875.

Bills to be returned within ten days.

After adjournment, bills must be approved in thirty days, else cannot become law.

Governor may object to items of appropriation in any bill.

agree to pass the bill, it shall be sent together with the objections to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases, the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within thirty days after such adjournment. If any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If, on reconsideration, one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.¹

ARTICLE V.

State officers, how elected and terms of office

SECTION 1. The secretary of state, comptroller, treasurer and attorney-general shall be chosen at a general election, and shall hold their offices for two years. Each of the officers in this article named (except the speaker of the assembly) shall, at stated times during his continuance in office, receive for his services a compensation, which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive, to his use, any fees or perquisites of office, or other compensation.

State engineer and surveyor, how chosen and term of office.

§ 2. A state engineer and surveyor shall be chosen at a general election, and shall hold his office two years, but no person shall be elected to said office who is not a practical engineer.

Superintendent of public works; appointment, powers and duties.

*§ 3. A superintendent of public works shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office until the end of the term of the governor by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the state engineer and surveyor; subject to the control of the legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the governor, whenever, in his judgment, the public interest shall so require; but, in case of the removal of such superintendent of public works from office, the governor shall file with the secretary of state a statement of the cause of such removal, and shall report such removal, and the cause thereof, to the legislature at its next session.

¹ 45 N. Y., 814; 59 Barb., 195.

* As amended, by vote of the people, Nov. 7, 1876. Went into effect, Jan. 1, 1877.

The superintendent of public works shall appoint not more than three assistant superintendents, whose duties shall be prescribed by him, subject to modification by the legislature, and who shall receive for their services a compensation to be fixed by law. They shall hold their office for three years, subject to suspension or removal by the superintendent of public works, whenever, in his judgment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled, for the remainder of the term for which he was appointed, by the superintendent of public works; but in case of the suspension or removal of any such assistant superintendent by him, he shall at once report to the governor, in writing, the cause of such removal. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the state engineer and surveyor, shall be appointed by the superintendent of public works, and be subject to suspension or removal by him. The office of canal commissioner is abolished from and after the appointment and qualification of the superintendent of public works, until which time the canal commissioners shall continue to discharge their duties as now provided by law. The superintendent of public works shall perform all the duties of the canal commissioners, and board of canal commissioners, as now declared by law, until otherwise provided by the legislature. The governor, by and with the advice and consent of the senate, shall have power to fill vacancies in the office of superintendent of public works; if the senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the senate.¹

*§ 4. A superintendent of state prisons shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office for five years, unless sooner removed; he shall give security in such amount, and with such sureties, as shall be required by law, for the faithful discharge of his duties; he shall have the superintendence, management and control of state prisons, subject to such laws as now exist, or may hereafter be enacted; he shall appoint the agents, wardens, physicians and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the superintendent. The comptroller shall appoint the clerks of the prisons. The superintendent shall have all the powers and perform all the duties not inconsistent herewith, which have heretofore been had and performed by the inspectors of state prisons; and from and after the time when such superintendent of state prisons shall have been appointed and qualified, the office of inspector of state prisons shall be and hereby is abolished. The governor may remove the superintendent for cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defence.²

Superintendent of state prisons; appointment, powers and duties.

§ 5. The lieutenant-governor, speaker of the assembly, secretary of state, comptroller, treasurer, attorney-general, and state engineer and surveyor, shall be the commissioners of the land office. The lieutenant-governor, secretary of state, comptroller, treasurer, and attorney-general, shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the state engineer and surveyor, and the canal commissioners.

Commissioners of the land office. Commissioners of the canal fund. Canal board.

§ 6. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.³

Powers and duties of boards, &c.

§ 7. The treasurer may be suspended from office by the governor, during the recess of the legislature, and until thirty days after the commencement of the next session of the legislature, whenever it shall

Treasurer may be suspended by governor.

¹ 92 N. Y., 191; 98 N. Y., 593.

² 40 Hun., 335.

³ 98 N. Y., 593.

* As amended by vote of the people, Nov. 7, 1876. Went into effect, Jan. 1, 1877.

appear to him that such treasurer has, in any particular, violated his duty. The governor shall appoint a competent person to discharge the duties of the office, during such suspension of the treasurer.¹

Certain
offices abol-
ished.

§ 8. All offices for the weighing, gauging, measuring, culling, or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished, and no such office shall hereafter be created by law; but nothing in this section contained, shall abrogate any office created for the purpose of protecting the public health, or the interests of the state in its property, revenue, tolls, or purchases or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.²

ARTICLE VI.*

Impeach-
ment, as-
sembly has
power of.

SECTION 1. The assembly shall have the power of impeachment, by a vote of the majority of all the members elected. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or a major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor, the lieutenant-governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the senate, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation, truly and impartially to try the impeachment, according to evidence; and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust, or profit, under this state; but the party impeached shall be liable to indictment and punishment according to law.³

Effect of
judgment.

Court of
appeals.
Judges
how
chosen.

§ 2. There shall be a court of appeals, composed of a chief judge and six associate judges, who shall be chosen by the electors of the state, and shall hold their office for the term of fourteen years from and including the first day of January next after their election. At the first election of judges under this constitution, every elector may vote for the chief and only four of the associate judges. Any five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have the appointment, with the power of removal, of its reporter and clerk, and of such attendants as may be necessary.⁴

Appoint-
ment of
clerk.

Vacancies
in office of
judge of
court of
appeals
how filled.

§ 3. When a vacancy shall occur, otherwise than by expiration of term, in the office of chief or associate judge of the court of appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the governor by and with the advice and consent of the senate, if the senate shall be in session, or if not, the governor alone, may appoint to fill such vacancy. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such

¹ 37 Hun, 450.

² 45 N. Y., 814; 17 N. Y., 141.

³ 32 Hun, 586; 35 Hun, 522; 63 N. Y., 96; 2 N. Y. Crim. R., 150.

⁴ 1 N. Y., 17; 3 N. Y., 547; 42 How. Pr. R., 282; 58 N. Y., 469.

[* Article 6 of the constitution (except section 28) was framed by delegates elected April 23, 1867, under chapter 194, laws of 1867, to a constitutional convention (convened pursuant to section 2 of article 13 of the constitution, by a vote of the people at the general election held November 6, 1866), which convention met in the city of Albany, June 4, 1867, and adjourned February 23, 1868.

Article 6 (except section 28) was submitted separately to the people, pursuant to chapter 318, laws of 1869, at the general election held November 2, 1869, and declared ratified and adopted by the board of state canvassers, by certificate of determination, dated December 6, 1869, the official vote thereon, as declared, standing, "for the amended judiciary article," 247,240 votes, and "against the amended judiciary article," 240,443 votes.]

case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.¹

§ 4. Upon the organization of the court of appeals, under this article, the causes then pending in the present court of appeals shall become vested in the court of appeals hereby established. Such of said causes as are pending on the first day of January, eighteen hundred and sixty-nine shall be heard and determined by a commission, to be composed of five commissioners of appeals, four of whom shall be necessary to constitute a quorum; but the court of appeals hereby established may order any of said causes to be heard therein. Such commission shall be composed of the judges of the present court of appeals, elected or appointed thereto, and a fifth commissioner who shall be appointed by the governor by and with the advice and consent of the senate; or, if the senate be not in session, by the governor; but in such case, the appointment shall expire at the end of the next session.

Causes pending in court of appeals to be referred to commissioners of appeals.

§ 5. If any vacancy shall occur in the office of the said commissioners, it shall be filled by appointment by the governor by and with the advice and consent of the senate; or if the senate is not in session, by the governor; but in such case, the appointment shall expire at the end of the next session. The commissioners shall appoint, from their number, a chief commissioner, and may appoint and remove such attendants as may be necessary. The reporter of the court of appeals shall be the reporter of said commission. The decisions of the commission shall be certified to, and entered and enforced, as the judgments of the court of appeals. The commission shall continue until the causes committed to it are determined, but not exceeding three years; and all causes then undetermined shall be heard by the court of appeals.

Commissioners of appeals. Vacancies, how filled.

Chief commissioner to be appointed.

* § 6. There shall be the existing supreme court with general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as now is or may be prescribed by law, and it shall be composed of the justices now in office, with one additional justice to be elected as hereinafter provided, who shall be continued during their respective terms, and of their successors. The existing judicial districts of the state are continued until changed pursuant to this section.† Five of the justices shall reside in the district in which is the city of New York, and five in the second judicial district, and four in each of the other districts. The legislature may alter the districts, without increasing the number, once after every enumeration, under this constitution of the inhabitants of the state.²

Supreme court, jurisdiction.

This section also amended in 1888, by adding provisions for the second division of the court of appeals. See post, p. 110.

§ 7. At the first session of the legislature, after the adoption of this article, and from time to time thereafter as may be necessary, but not oftener than once in five years, provisions shall be made for organizing, in the supreme court, not more than four general terms thereof, each to be composed of a presiding justice, and not more than three other justices, who shall be designated, according to law, from the whole number of justices. Each presiding justice shall continue to act as such during his term of office. Provisions shall be made by law for holding the general terms in each judicial district. Any justice of the supreme

Terms of supreme court.

¹ 4 Abb. Ct. Ap. Dec., 213.

² 45 N. Y., 814; 49 N. Y., 280; 53 N. Y., 450; 52 N. Y., 57; 13 N. Y., 468; 3 N. Y., 186; 65 Barb., 294; 21 Barb., 424; 38 How. Pr. R., 513; 42 How. Pr. R., 263; 3 Abb. Pr. R., (N. S.), 199; 13 Abb. Pr. R. (N. S.), 6; 3 Hun, 375; 58 N. Y., 489; 75 N. Y., 528; 79 N. Y., 582.

* As amended by a vote of the people, Nov. 4, 1879. Went into effect January 1, 1880. See also post, § 23 of this article, added in 1882.

† See L. 1847, chap. 241, L. 1857, chap. 483, and L. 1876, chap. 24, for existing judicial districts.

court may hold special terms and circuit courts, and may preside in courts of oyer and terminer, in any county.¹

Judge or justice may not sit in review of decisions made by him, &c.

§ 8. No judge or justice shall sit, at a general term of any court, or in the court of appeals, in review of a decision made by him, or by any court of which he was at the time, a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and except as herein otherwise provided, the legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and equity that they have heretofore exercised.²

Vacancy in office of justice of supreme court, how filled.

§ 9. When a vacancy shall occur, otherwise than by expiration of term, in the office of justice of the supreme court, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until any vacancy shall be so filled, the governor by and with the advise and consent of the senate, if the senate shall be in session, or if not in session, the governor may appoint to fill such vacancy. Any such appointment shall continue until and including the last day of December next after the election at which the vacancy shall be filled.³

Judges of court of appeals, or justices of supreme court to hold no other office. Removals, proceedings in relation to.

§ 10. The judges of the court of appeals, and the justices of the supreme court, shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the legislature or the people, shall be void.⁴

§ 11. Judges of the court of appeals, and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if two-thirds of all the members elected to each house concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace and judges and justices of inferior courts not of record, may be removed by the senate, on the recommendation of the governor, if two-thirds of all the members elected to the senate concur therein. But no removal shall be made, by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the charges against him, and shall have had an opportunity of being heard. On the question of removal, the yeas and nays shall be entered on the journal.⁵

City courts.

*§ 12. The superior court in the city of New York, the court of common pleas for the city and county of New York, the superior court of Buffalo, and the city court of Brooklyn, are continued with the powers and jurisdiction they now severally have, and such further civil and criminal jurisdiction as may be conferred by law. The superior court of New York shall be composed of the six judges in office at the adoption of this article, and their successors. The court of common pleas of New York, of the three judges then in office, and their successors, and three additional judges. The superior court of Buffalo, of the judges now in office, and their successors; and the city court of Brooklyn, of such number of judges, not exceeding three, as may be provided by law. The judges of said courts, in office at the adoption of this article, are continued until the expiration of their terms. A chief judge shall be appointed by the judges of each of said courts, from their own number, who shall act as such during his official term. Vacancies in the office of the judges named in this section, occurring otherwise than by expiration of term, shall be filled in the same manner as vacancies in the supreme court. The legislature may provide for detailing judges of the superior court and court of common pleas of New York to hold circuits and special terms of the supreme court in that city; and for detailing

¹ 47 N. Y., 383; 49 N. Y., 230. For the existing judicial departments, see § 28 of this article, adopted November 4, 1893; and L. 1893, ch. 529.

² 46 N. Y., 249; 42 N. Y., 276; 17 N. Y., 270; 13 Abb. N. C., 168; 37 Hun., 429, 569; 90 N. Y., 584; 44 Hun., 567.

³ 50 N. Y., 288, 291; 49 N. Y., 230; 47 N. Y., 375; 45 N. Y., 816; 13 N. Y., 360; 42 How. Pr. R., 206.

⁴ 52 N. Y., 478; 49 N. Y., 230; 4 Abb. Ct. Ap. Dec., 213; 30 Hun., 154.

⁵ 49 N. Y., 230; 17 N. Y., 370; 32 Hun., 588.

* As amended by vote of the people, Nov. 2, 1890. Went into effect Jan. 1, 1891.

judges of the city court of Brooklyn, to hold circuits and special terms of the supreme court in Kings county as the public interest may require.'

* § 13. Justices of the supreme court shall be chosen by the electors of their respective judicial districts. Judges of all the courts mentioned in the last preceding section shall be chosen by the electors of the cities respectively in which the said courts are instituted. The official terms of the said justices and judges who shall be elected after the adoption of this article shall be fourteen years from and including the first day of January next after their election. But no person shall hold the office of justice or judge of any court longer than until and including the last day of December next after he shall be seventy years of age. The compensation of every judge of the court of appeals, and of every justice of the supreme court, whose term of office shall be abridged pursuant to this provision, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected.'

Certain judges how chosen; terms of office; restriction as to age; pension.

§ 14. The judges and justices hereinbefore mentioned shall receive for their services a compensation to be established by law, which shall not be diminished during their official terms. Except the Judges of the court of appeal and the justices of the supreme court, they shall be paid, and the expenses of their courts defrayed, by the cities or counties in which such courts are instituted, as shall be provided by law.'

Compensation of judges or justices, not to be diminished during term of office. County courts.

§ 15. The existing county courts are continued, and the judges thereof in office at the adoption of this article shall hold their offices until the expiration of their respective terms. Their successors shall be chosen by the electors of the counties, for the term of six years. The county courts shall have the powers and jurisdiction they now possess, until altered by the legislature. They shall also have original jurisdiction in all cases where the defendants reside in the county and in which the damages claimed shall not exceed one thousand dollars; and also such appellate jurisdiction as shall be provided by law, subject, however, to such provision as shall be made by law for the removal of causes into the supreme court. They shall also have such other original jurisdiction as shall, from time to time, be conferred upon them by the legislature. The county judge, with two justices of the peace, to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the legislature shall prescribe, and he shall perform such other duties as may be required by law. His salary, and the salary of the surrogate when elected as a separate officer, shall be established by law, payable out of the county treasury and shall not be diminished during his term of office. The justices of the peace shall be paid, for services in courts of sessions, a per diem allowance out of the county treasury. The county judge shall also be surrogate of his county; but in counties having a population exceeding forty thousand, the legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be the same as that of the county judge. The county judge of any county may preside at courts of sessions, or hold county courts, in any other county, except New York and Kings, when requested by the judge of such other county.'

§ 16. The legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county,

Local judicial officers.

¹ 53 N. Y., 450; 45 N. Y., 814; 59 Barb., 233; 13 Abb. Pr. E. (N. S.), 323; 60 N. Y., 204; 7 J. & S., 192; 3 Abb. N. C., 478; 7 Daly, 197; 19 J. & S., 119; 90 N. Y., 68; 100 N. Y., 239; 103 N. Y., 88; 105 N. Y., 377.

² 45 N. Y., 814; 59 Barb., 233; 78 N. Y., 408; 43 How. Pr. E., 208; 2 How., N. S., 502; 83 Hun, 441; 43 Hun, 373; 97 N. Y., 530; 100 N. Y., 239.

³ 53 N. Y., 450; 29 J. & S., 66; 90 N. Y., 68; 93 N. Y., 503; 100 N. Y., 239.
⁴ 53 N. Y., 450; 53 N. Y., 630; 45 N. Y., 814; 59 Barb., 191, 223; 57 Barb., 643; 7 Lans., 423; 24 Hun, 550; 28 Hun, 484; 20 Hun, 513; 30 Hun, 230, 502; 34 Hun, 604; 38 Hun, 633; 40 Hun, 563; 41 Hun, 506; 86 N. Y., 513; 90 N. Y., 68; 98 N. Y., 593; 100 N. Y., 241; 103 N. Y., 453.

* As amended by vote of the people, Nov. 2, 1860. Went into effect Jan. 1, 1861.

to discharge the duties of county judge and of surrogate, in cases of their inability, or of a vacancy, and to exercise such other powers in special cases as may be provided by law.¹

Judge of court of appeals, or justice of supreme court, election or appointment of, question to be submitted to people.

§ 17. The legislature shall provide for submitting to the electors of the state, at the general election in the year eighteen hundred and seventy-three, two questions, to be voted upon on separate ballots, as follows: First, "Shall the offices of chief judge and associate judge of the court of appeals, and of justice of the supreme court, be hereafter filled by appointment?"* If a majority of the votes upon the question shall be in the affirmative, the said officers shall not thereafter be elective, but, as vacancies occur, they shall be filled by appointment by the governor by and with the advice and consent of the senate; or if the senate be not in session, by the governor; but in such case, he shall nominate to the senate when next convened, and such appointment by the governor alone shall expire at the end of that session. Second, "Shall the offices of the judges, mentioned in sections twelve and fifteen of articles six of the constitution, be hereafter filled by appointment?"* If a majority of the votes upon the question shall be in the affirmative, the said officers shall not thereafter be elective, but as vacancies occur, they shall be filled in the manner in this section above provided.

Justices of the peace.

§ 18. The electors of the several towns shall, at their annual town meeting, and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace, and judges or justices of inferior courts, not of record, and their clerks, may be removed, after due notice and an opportunity of being heard, by such courts as may be prescribed by law, for causes to be assigned in the order of removal. Justices of the peace and district court justices shall be elected in the different cities in this state, in such manner, and with such powers, and for such terms, respectively, as shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of cities, or appointed by some local authorities thereof.²

Inferior local courts.

§ 19. Inferior local courts of civil and criminal jurisdiction may be established by the legislature; and, except as herein otherwise provided, all judicial officers shall be elected or appointed at such times, and in such manner as the legislature may direct.³

Clerks of supreme court and court of appeals.

§ 20. Clerks of the several counties shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. The clerk of the court of appeals shall keep his office at the seat of government. His compensation shall be fixed by law, and paid out of the public treasury.⁴

No judicial officer, except justice of the peace, to receive fees.

§ 21. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judge of the court of appeals, justice of the supreme court, or judge of a court of record in the cities of New York, Brooklyn or Buffalo, practice as an attorney or counsellor in any court of record in this state, or act as referee.

Judgments, etc., may be ordered directly to court of appeals for review.

§ 22. The legislature may authorize the judgments, decrees or decisions of any court of record of original civil jurisdiction, established in a city, to be removed from review, directly into the court of appeals.⁵

Publication of statutes to

§ 23. The legislature shall provide for the speedy publication of all statutes and also for the appointment by the justices of the supreme

¹ 100 N. Y., 241; 102 N. Y., 438.

² 53 N. Y., 450; 46 N. Y., 57; 37 N. Y., 671; 14 Abb. Pr. R. (N. S.), 419; 58 N. Y., 516, 679; 78 N. Y., 64; 29 Hun, 513; 95 N. Y., 124; 42 Hun, 273.

³ 50 N. Y., 278; 5 Hun, 310; 4 T. & C., 391; 66 N. Y., 189; 90 N. Y., 68.

⁴ 98 N. Y., 523.

⁵ 103 N. Y., 377.

* Submitted to vote of the people, November 4, 1878—pursuant to chap. 314, laws of 1873,—and determined in the negative.

court designated to hold general terms, of a reporter of the decisions of that court. All laws and judicial decisions shall be free for publication by any person.

§ 24. The first election of judges of the court of appeals, and of the three additional judges of the court of common pleas for the city and county of New York, shall take place on such day, between the first Tuesday of April and the second Tuesday in June next after the adoption of this article, as may be provided by law. The court of appeals, the commissioners of appeals, and the additional judges of the said court of common pleas, shall respectively enter upon their duties on the first Monday of July thereafter.¹

§ 25. Surrogates, justices of the peace, and local judicial officers provided for in section sixteen, in office when this article shall take effect, shall hold their respective offices until the expiration of their terms.²

§ 26. Courts of special sessions shall have such jurisdiction of offences of the grade of misdemeanors as may be prescribed by law.³

§ 27. For the relief of surrogates' courts, the legislature may confer upon courts of record, in any county having a population exceeding four hundred thousand, the powers and jurisdiction of surrogates, with authority to try issues of fact by jury in probate causes.⁴

*§ 28. The court of appeals may order any of the causes, not exceeding five hundred in number, pending in that court at the time of the adoption of this provision, to be heard and determined by the commissioners of appeals, and the legislature may extend the term of service of the commissioners of appeals, not exceeding two years.[†]

†§ 28. (So in the original.) The legislature, at the first session thereof after the adoption of this amendment, shall provide for organizing the supreme court not more than five general terms thereof; and for the election at the general election next after the adoption of this amendment, by the electors of the judicial districts mentioned in this section, respectively, of not more than two justices of the supreme court in addition to the justices of that court now in office in the first, fifth, seventh and eighth, and not more than one justice of that court in the second, third, fourth and sixth judicial districts. The justices so elected shall be invested with their offices on the first Monday of June next after their election.[¶]

ARTICLE VII.

Section 1. After paying the expenses of collection, superintendence and ordinary repairs, there shall be appropriated and set apart in each fiscal year out of the revenues of the state canals, in each year, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of one million and three hundred thousand dollars until the first day of June, one thousand eight hundred and fifty-five, and from that time the sum of one million and seven hundred thousand dollars in each fiscal year, as a sinking fund to pay the interest and redeem the principal of that part of the state debt called the canal debt, as it existed at the time first aforesaid, and including three hundred thousand dollars then to be borrowed, until the same shall be wholly paid; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

¹ 45 N. Y., 512.

² 100 N. Y., 236.

³ 3 N. Y. Crim. R., 168; 26 Hun, 156; 83 N. Y., 240; 90 N. Y., 221.

⁴ 100 N. Y., 236.

* Section 23, added by vote of the people, Nov. 5, 1872. Went into effect January 1, 1873.

† Term of service of commissioners of appeals extended to July 1, 1875, by chap. 3, laws of 1873. None of the laws relating to the commission of appeals, except the provisions contained in the constitution, are included in this compilation, as that court has ceased to exist.

‡ Added by vote of the people, November 7, 1882. Went into effect January 1, 1883.

¶ For the legislation under this section, see L. 1883, ch. 329.

be provided for to be free to all.

Judges, first election of, when to enter upon duties.

Local judicial officers, term of office of present incumbents.

Court of special sessions. Surrogates courts.

Court of appeals may order causes to be heard by commission of appeals.

Legislature to organize five general terms.

Canal debt, sinking fund, June 1, 1846, \$1,800,000, June 1, 1855, \$1,700,000.

General fund debt, sinking fund, \$350,000; after certain period, \$1,500,000.

§ 2. After complying with the provisions of the first section of this article, there shall be appropriated and set apart out of the surplus revenues of the state canals, in each fiscal year, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of three hundred and fifty thousand dollars, until the time when a sufficient sum shall have been appropriated and set apart, under the said first section, to pay the interest and extinguish the entire principal of the canal debt, and after that period, then the sum of one million and five hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the general fund debt, including the debts for loans of the state credit to railroad companies which have failed to pay the interest thereon, and also the contingent debt on state stocks loaned to incorporated companies which have hitherto paid the interest thereon, whenever and as far as any part thereof may become a charge on the treasury or general fund, until the same shall be wholly paid; and the principal and income of the said last mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the moneys to the said sinking fund shall at any time be deferred, by reason of the priority recognized in the first section of this article, the sum so deferred, with quarterly interest thereon, at the then current rate, shall be paid to the last mentioned sinking fund, as soon as it can be done consistently with the just rights of the creditors holding said canal debt.¹

No tolls shall be imposed.

Legislature shall annually make provision for expenses and repairs.

Sinking fund.

Contracts for work and materials.

Contractors, no extra compensation to be made to.

Loans to incorporated companies not to be released or compromised.

*§ 3. The first and second sections of this article having been fully complied with, no tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals, and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. The canal debt contracted under the section hereby amended, which, on the first day of October, eighteen hundred and eighty, amounted to eight million nine hundred and eighty-two thousand two hundred dollars, shall continue to be known as the "canal debt, under article seven, section three of the constitution;" and the sinking fund applicable to the payment thereof, together with the contributions to be made thereto, shall continue to be known as the "canal debt sinking fund," and the principal and interest of said debt shall be met as provided in the fifth section of this article. All contracts for work or materials on any canals shall be made with the person who shall offer to do or provide the same at the lowest price with adequate security for their performance.

No extra compensation shall be made to any contractor; but if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.²

§ 4. The claims of the state against any incorporated company to pay the interest and redeem the principal of the stock of the state loaned or advanced to such company, shall be fairly enforced, and not released or compromised; and the moneys arising from such claim shall be set apart,

¹ 36 Hun, 326; 92 N. Y., 323.

² 55 N. Y., 337; 27 N. Y., 330; 7 N. R., 9; 46 Barb., 206; 19 Barb., 291; 3 Lans., 401; 4 Lans., 272; 1 N. Y. S. C. R. (T. & C., 14; id., 311.

³ Section 3, as amended by vote of the people, November 7, 1892. Went into effect January 1, 1893.

and applied as part of the sinking fund provided in the second section of this article. But the time limited for the fulfillment of any condition of any release or compromise heretofore made or provided for, may be extended by law.

* § 5. There shall annually be imposed and levied a tax which shall be sufficient to pay the interest and extinguish the principal of the canal debt mentioned in the third section of this article, as the same shall become due and payable, and the proceeds of such tax shall, in each fiscal year, be appropriated and set apart for the sinking fund constituted for the payment of the principal and the interest of the aforesaid debt. But the legislature may, in its discretion, impose for the fiscal year, beginning on the first day of October, eighteen hundred and eighty-three, a state tax on each dollar of the valuation of the property in this state which may by law then be subject to taxation, sufficient, with the accumulations of the sinking fund applicable thereto, to pay in full both the principal and interest of the canal debt before mentioned, and the proceeds of such tax shall be appropriated and set apart for the sinking fund constituted for the payment of the principal and the interest of said debt. In the event of such action by the legislature, then the legislature shall, under the law directing the assessment and levy of such tax, make such provision for the retirement of the canal debt as it shall deem equitable and just to the creditors of the state.

Legislature shall annually impose and levy tax for payment of principal and interest of debt.

* § 6. The legislature shall not sell, lease, or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black River canal, but they shall remain the property of the state and under its management forever. All funds that may be derived from any lease, sale, or other disposition of any canal shall be applied in payment of the canal debt mentioned in the third section of this article.

Certain canals of the state not to be leased or sold. Funds from leases or sale, how applied.

§ 7. The legislature shall never sell or dispose of the salt springs belonging to this state. The lands contiguous thereto and which may be necessary and convenient for the use of the salt springs, may be sold by authority of law and under the direction of the commissioners of the land office, for the purpose of investing the moneys arising therefrom in other lands alike convenient; but by such sale and purchase the aggregate quantity of these lands shall not be diminished.

Salt springs.

§ 8. No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

Appropriation bills.

§ 9. The credit of the state shall not, in any manner, be given or loaned to, or in aid of any individual, association or corporation.

State credit not to be loaned.

¹ 5 Lane., 307; 13 Hun., 17; 45 N. Y., 812; 43 Hun., 102.

² 12 N. Y., 606; 6 N. Y., 74; 7 Barb., 599.

³ 55 N. Y., 396; 8 N. Y., 317; 3 N. Y., 294; 3 Denio, 381; 101 N. Y., 682; 106 N. Y., 104.

⁴ As amended by vote of the people, November 7, 1882. Went into effect January 1, 1883.

Power to contract debts limited.

§ 10. The state may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not, at any time, exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.¹

Debts to repel invasion, &c., may be contracted.

§ 11. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Limitation of the legislative power in the creation of debts.

§ 12. Except the debts specified in the tenth and eleventh sections of this article, no debts shall be hereafter contracted by or on behalf of this state, unless such debt shall be authorized by a law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it, at such election. On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

The legislature may at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted, in pursuance of such law, shall remain in force and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on, within three months after its passage, or at any general election, when any other law, or any bill, or any amendment to the constitution shall be submitted to be voted for or against.²

Sinking funds to be separately kept and safely invested.

*§ 13. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the state shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided.³

Claims barred by lapse of time—limitation of existing claims.

*§ 14. Neither the legislature, canal board, canal appraisers, nor any person or persons acting in behalf of the state, shall audit, allow, or pay any claim which, as between citizens of the state, would be barred by lapse of time. The limitation of existing claims shall begin to run from the adoption of this section; but this provision shall not be construed to revive claims already barred by existing statutes, nor to repeal any statute fixing the time within which claims shall be presented or allowed, nor

¹ 52 N. Y., 563; 26 Hun, 396.

² 46 N. Y., 406; 52 N. Y., 556.

³ 52 N. Y., 563; 3 Abb. Ct. Ap. Dec., 548; 47 How. Pr. R., 510; 3 N. Y. S. C. R. (T. & C.), 341; 4 Id., 373; 92 N. Y., 463.

* As amended by vote of the people, Nov. 3, 1874. Went into effect Jan. 1, 1876.

shall it extend to any claims duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.¹

ARTICLE VIII.

SECTION 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.²

Corporations, how created.

§ 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.³

Debts of corporations.

§ 3. The term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.⁴

Corporations defined.

*§ 4. The legislature shall, by general law, conform all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

Charters for savings banks and banking purposes.

§ 5. The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation issuing bank notes of any description.⁵

Specie payments.

§ 6. The legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.⁶

Registry of bills or notes.

§ 7. The stockholders in every corporation and joint-stock association for banking purposes issuing bank notes or any kind of paper credits to circulate as money, after the first day of January, one thousand eight hundred and fifty, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind, contracted after the said first day of January, one thousand eight hundred and fifty.⁷

Individual responsibility of stockholders.

§ 8. In case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.⁸

Insolvency of banks, preference. Legislature to provide for the incorporation of cities and villages, and to define powers thereof in certain cases.

§ 9. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning

¹ 28 How. Pr. R., 353; 31 N. Y., 136; 17 N. Y., 235; 19 N. Y., 116; 13 N. Y., 143; 8 N. Y., 241; id., 317; 99 N. Y., 391.

² 49 N. Y., 453; 26 N. Y., 467; 26 Barb., 657; 20 Barb., 119; 16 Barb., 188; 15 Barb., 657; 70 N. Y., 327; 27 Hun, 493; 40 Hun, 31.

³ 35 Hun, 637.

⁴ 14 Barb., 403, 559; 1 Barb. Ch. R., 547; 6 Paige, 559; 31 Hun, 516; 32 Hun, 317.

⁵ 44 Hun, 563.

⁶ 27 N. Y., 393; 18 N. Y., 199; 24 W., 473; 8 Cow., 387; 39 Barb., 356; 2 Abb. Ct. Ap. Dec., 399; 99 N. Y., 192.

⁷ As amended by vote of the people, November 3, 1874. Went into effect January 1, 1875.

their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.¹

The credit
or money
of the state
not to be
given or
loaned.

*§ 10. Neither the credit nor the money of the state shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held by the state for educational purposes.²

Counties,
cities,
towns and
villages not
to give
money,
&c. or loan,
&c. credit.
Their
power to
contract
debts
limited.

*†§ 11. No county, city, town or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation, or become, directly or indirectly the owner of stock in or bonds of any association or corporation, nor shall any such county, city, town or village be allowed to incur any indebtedness, except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor, as may be authorized by law.

No county containing a city of over one hundred thousand inhabitants, or any such city, shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No such county or such city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water, but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants or any such city of this state, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.³

ARTICLE IX.

Common
school,
literature
and United
States de-
posit funds.

SECTION 1. The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies, and

¹ 26 N. Y., 467; 13 N. Y., 38; 15 N. Y., 297, 532; 5 Hill, 121; 55 N. Y., 50; 24 Barb., 446; 10 Wend., 547; 5 Hun, 485; 29 Hun, 391; 82 N. Y., 621; 90 N. Y., 68; 98 N. Y., 313.

² 96 N. Y., 137.

³ 76 N. Y., 475; 5 Hun, 475; 39 Hun, 370; 40 Hun, 190; 96 N. Y., 432; 99 N. Y., 586; 101 N. Y., 490; 102 N. Y., 313.

* Section 10 and 11 added by vote of the people, Nov. 3, 1874. Went into effect Jan. 1, 1875.

† Section 11 thus amended by vote of the people, Nov. 4, 1894. Went into effect Jan. 1, 1895.

the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of the said common school fund.'

ARTICLE X.

SECTION 1. Sheriffs, clerks of counties, including the register and clerk of the city and county of New York, coroners, and district attorneys, shall be chosen, by the electors of the respective counties, once in every three years and as often as vacancies shall happen. Sheriffs shall hold no other office, and be ineligible for the next three years after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defence.'

Sheriffs, clerks of counties, register and clerk of N. York, coroners and district attorneys—governor may remove.

§ 2. All county officers whose election or appointment is not provided for, by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town, and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct.'

Officers, how chosen or appointed

§ 3. When the duration of any office is not provided by this constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.'

Duration of office.

§ 4. The time of electing all officers named in this article shall be prescribed by law.

Time of election.

§ 5. The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.'

Vacancies in office, how filled.

§ 6. The political year and legislative term shall begin on the first day of January, and the legislature shall, every year, assemble on the first Tuesday in January, unless a different day shall be appointed by law.

Political year.

§ 7. Provision shall be made by law for the removal for misconduct or malversation in office of all officers (except judicial) whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal.'

Removal from office.

§ 8. The legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this constitution.'

When office deemed vacant.

*§ 9. No officer whose salary is fixed by the constitution shall receive any additional compensation. Each of the other state officers named in

Compensation of certain officers.

¹ 42 N. Y., 310; 13 Barb., 400; 40 How. Pr. R., 362.

² 2 Wend., 266; 11 Wend., 511; 29 Hun., 175; 103 N. Y., 441.

³ 55 N. Y., 50; 62 N. Y., 83, 374; 50 N. Y., 459; 41 N. Y., 135; 37 N. Y., 428; 82 N. Y., 377; 15 N. Y., 522; 57 Barb., 397; 54 Barb., 483; 49 Barb., 13; 25 Barb., 533; 7 Barb., 30; 2 Barb., 517; 47 How. Pr. R., 512; 62 N. Y., 567; 17 Hun., 559; 69 N. Y., 393; 77 N. Y., 542; 78 N. Y., 356; 30 J. & S. 72; 27 Hun., 93; 41 Hun., 288; 99 N. Y., 539; 106 N. Y., 506.

⁴ 52 N. Y., 33; 46 N. Y., 61; 34 N. Y., 396; 30 Hun., 438; 93 N. Y., 191; 94 N. Y., 591.

⁵ 46 N. Y., 57; 45 N. Y., 816; 24 Wend., 315; 18 Hun., 511; 78 N. Y., 356; 40 Hun., 364; 103 N. Y., 439.

⁶ 48 N. Y., 516.

⁷ 45 N. Y., 516.

* Section 9 added by vote of the people, November 3, 1874. Went into effect January 1, 1875.

the constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use, any fees or perquisites of office or other compensation.¹

ARTICLE XI.

MILITIA.

SECTION 1. The militia of this state shall, at all times hereafter, be armed and disciplined and in readiness for service; but all such inhabitants of this state of any religious denomination whatever as from scruples of conscience may be averse to bearing arms, shall be excused therefrom upon such conditions as shall be prescribed by law.²

Manner of choosing or appointing militia officers.

§ 2. Militia officers shall be chosen, or appointed, as follows: Captains, subalterns, and non-commissioned officers shall be chosen by the written votes of the members of their respective companies. Field officers of regiments and separate battalions by the written votes of the commissioned officers of the respective regiments and separate battalions; brigadier-generals and brigade inspectors by the field officers of their respective brigades; major-generals, brigadier-generals and commanding officers of regiments or separate battalions, shall appoint the staff officers to their respective divisions, brigades, regiments or separate battalions.³

Officers to be appointed by governor and senate.

§ 3. The governor shall nominate, and with the consent of the senate, appoint all major-generals and the commissary-general. The adjutant-general and other chiefs of staff departments, and the aids-de-camp of the commander-in-chief, shall be appointed by the governor, and their commissions shall expire with the time for which the governor shall have been elected. The commissary-general shall hold his office for two years. He shall give security for the faithful execution of the duties of his office in such manner and amount as shall be prescribed by law.⁴

Commissary general.**Election of militia officers.**

§ 4. The legislature shall, by law, direct the time and manner of electing militia officers, and of certifying their elections to the governor.

Officers, how commissioned.

§ 5. The commissioned officers of the militia shall be commissioned by the governor; and no commissioned officer shall be removed from office, unless by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the decision of a court-martial, pursuant to law. The present officers of the militia shall hold their commissions subject to removal, as before provided.

Election of militia officers may be abolished.

§ 6. In case the mode of election and appointment of militia officers hereby directed, shall not be found conducive to the improvement of the militia, the legislature may abolish the same, and provide by law for their appointment and removal, if two-thirds of the members present in each house shall concur therein.

*ARTICLE XII.

Oath of office prescribed.

SECTION 1. Members of the legislature (and all officers, executive and judicial, except such inferior officers as shall be by law exempted), shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the state of New York, and that I will faithfully discharge the duties of the office of _____, according to the best of my ability;" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and sub-

¹ 98 N. Y., 593.

² 50 N. Y., 280; 45 N. Y., 814; 6 Lans., 44.

³ 40 N. Y., 114.

⁴ 40 N. Y., 114; 53 Barb., 13.

* As amended by vote of the people, November 3, 1874. Went into effect January 1, 1875.

scribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test, shall be required as a qualification for any office of public trust.¹

ARTICLE XIII.

SECTION 1. Any amendment or amendments to this constitution may be proposed in the senate and assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice, and if in the legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the legislature, voting thereon, such amendment or amendments shall become part of the constitution.

Amendments.

* § 2. At the general election to be held in the year eighteen hundred and sixty-six, and in each twentieth year thereafter, and also at such time as the legislature may by law provide, the question, "Shall there be a convention to revise the constitution, and amend the same?" shall be decided by the electors qualified to vote for members of the legislature; and in case a majority of the electors so qualified, voting at such election, shall decide in favor of a convention for such purpose, the legislature at its next session shall provide by law for the election of delegates to such convention.²

Future conventions, how called.

ARTICLE XIV.

SECTION 1. The first election of senators and members of the assembly, pursuant to the provisions of this constitution, shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-seven. The senators and members of assembly who may be in office on the first day of January, one thousand eight hundred and forty-seven, shall hold their offices until and including the thirty-first day of December following, and no longer.

Election, term of office of senators and members of assembly.

§ 2. The first election of governor and lieutenant-governor under this constitution shall be held on the Tuesday succeeding the first Monday of November, one thousand eight hundred and forty-eight; and the governor and lieutenant-governor in office when this constitution shall take effect, shall hold their respective offices until and including the thirty-first day of December of that year.

First election of governor and lieutenant-governor, when.

§ 3. The secretary of state, comptroller, treasurer, attorney-general, district-attorneys, surveyor-general, canal commissioners and inspectors

State officers, and others, to

¹ 37 Hun, 44.

² 39 N. Y., 433.

* A convention, held in 1867, pursuant to this provision, proposed a new constitution, which was voted upon in parts, in November, 1869, and rejected, except article six (sections 1 to 27 inclusive).

remain in
office till
December
31, 1847.

First elec-
tion of judi-
cial offi-
cers, when.

Jurisdic-
tion of
pending
suits.

Chancellor
and su-
preme
court.

Masters in
chancery.

Vacancy in
office of
chancellor
or justice
of supreme
court, how
filled.

Offices
abolished.

of state prisons, in office when this constitution shall take effect, shall hold their respective offices until and including the thirty-first day of December, one thousand eight hundred and forty-seven, and no longer.

§ 4. The first election of judges and clerk of the court of appeals, justices of the supreme court, and county judges, shall take place at such time between the first Tuesday of April and the second Tuesday of June, one thousand eight hundred and forty-seven, as may be prescribed by law. The said courts shall respectively enter upon their duties on the first Monday of July, next thereafter; but the term of office of said judges, clerk and justices, as declared by this constitution, shall be deemed to commence on the first day of January, one thousand eight hundred and forty-eight.

§ 5. On the first Monday of July, one thousand eight hundred and forty-seven, jurisdiction of all suits and proceedings then pending in the present supreme court and court of chancery, and all suits and proceedings originally commenced and then pending in any court of common pleas (except in the city and county of New York), shall become vested in the supreme court hereby established. Proceedings pending in courts of common pleas, and in suits originally commenced in justices' courts, shall be transferred to the county courts provided for in this constitution, in such manner and form and under such regulations as shall be provided by law. The courts of oyer and terminer hereby established shall, in their respective counties, have jurisdiction on and after the day last mentioned of all indictments and proceedings then pending in the present courts of oyer and terminer, and also of all indictments and proceedings then pending in the present courts of general sessions of the peace, except in the city of New York, and except in cases of which the courts of sessions hereby established may lawfully take cognizance; and of such indictments and proceedings the courts of sessions hereby established shall have jurisdiction on and after the day last mentioned.

§ 6. The chancellor and the present supreme court shall, respectively, have power to hear and determine any of such suits and proceedings ready on the first Monday of July, one thousand eight hundred and forty-seven, for hearing or decision, and shall, for their services therein, be entitled to their present rates of compensation until the first day of July, one thousand eight hundred and forty-eight, or until all such suits and proceedings shall be sooner heard and determined. Masters in chancery may continue to exercise the functions of their office in the court of chancery, so long as the chancellor shall continue to exercise the functions of his office under the provisions of this constitution. And the supreme court hereby established shall also have power to hear and determine such of said suits and proceedings as may be prescribed by law.

§ 7. In case any vacancy shall occur in the office of chancellor or justice of the present supreme court, previously to the first day of July, one thousand eight hundred and forty-eight, the governor may nominate, and, by and with the advice and consent of the senate, appoint a proper person to fill such vacancy. Any judge of the court of appeals or justice of the supreme court elected under this constitution may receive and hold such appointment.

§ 8. The offices of chancellor, justice of the existing supreme court, circuit judge, vice-chancellor, assistant vice-chancellor, judge of the existing county courts of each county, supreme court commissioner, master in chancery, examiner in chancery, and surrogate (except as herein otherwise provided), are abolished, from and after the first Monday of July, one thousand eight hundred and forty-seven.

¹ 45 N. Y., 815; 41 N. Y., 159; 59 Barb., 191; 44 Barb., 443; 1 Barb., 643.

² 3 Barb., 332.

§ 9. The chancellor, the justices of the present supreme court, and the circuit judges, are hereby declared to be severally eligible to any office at the first election under this constitution.

Chancellor and justices of present supreme court, eligible.

§ 10. Sheriffs, clerks of counties (including the register and clerk of the city and county of New York), and justices of the peace and coroners, in office when this constitution shall take effect, shall hold their respective offices until the expiration of the term for which they were respectively elected.

Officers to hold until expiration of term.

§ 11. Judicial officers in office when this constitution shall take effect, may continue to receive such fees and perquisites of office as are now authorized by law, until the first day of July, one thousand eight hundred and forty-seven, notwithstanding the provisions of the twentieth section of the sixth article of this constitution.

Judicial officers may receive fees.

§ 12. All local courts established in any city or village, including the superior court, common pleas, sessions and surrogates' courts of the city and county of New York, shall remain, until otherwise directed by the legislature, with their present powers and jurisdictions; and the judges of such courts and any clerks thereof in office on the first day of January, one thousand eight hundred and forty-seven, shall continue in office until the expiration of their terms of office, or until the legislature shall otherwise direct.

Local courts to remain, &c.

§ 13. This constitution shall be in force from and including the first day of January, one thousand eight hundred and forty-seven, except as is herein otherwise provided.

When constitution goes into operation.

*ARTICLE XV.

SECTION 1. Any person holding office under the laws of this state, who, except in payment of his legal salary, fees or perquisites, shall receive, or consent to receive, directly or indirectly, any thing of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offence of bribery.

Bribery and official corruption.

§ 2. Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it is tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony.

The same subject

§ 3. Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

Person offering or receiving bribe may be witness.

§ 4. Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the governor, after due notice and an opportunity of being heard in his defence. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this state, within such county, or of receiving bribes by any such person in said county, shall be a charge against the state, and their payment by the state shall be provided for by law.¹

District attorney may be removed for failure to prosecute violations. Expenses of prosecution, how chargeable

¹ 13 Abb. Pr. R. (N. S.), 328; 90 N. Y., 68; 109 N. Y., 42.

² 30 Hun, 443.

³ Article 15, added by vote of the people, Nov. 3, 1874. Went into effect January 1, 1875.

* ARTICLE XVI.

Amend-
ments,
when to
take effect.

SECTION 1. All amendments to the constitution shall be in force from and including the first day of January succeeding the election at which the same were adopted, except when otherwise provided by such amendments.

Done, in convention, at the capitol in the city of Albany, the ninth day of October, in the year one thousand eight hundred and forty-six, and of the independence of the United States of America the seventy-first.

In witness whereof, we have hereunto subscribed our names.

JOHN TRACY, *President*

and delegate from the county of Chenango.

JAMES F. STARBUCK,
H. W. STRONG,
FR. SEGER,

} *Secretaries.*

COURT OF APPEALS, SECOND DIVISION.

† AMENDMENT TO ARTICLE 6, SECTION 6.

Whenever, and as often as there shall be such an accumulation of causes on the calendar of the court of appeals that the public interests require a more speedy disposition thereof, the said court may certify such fact to the governor, who shall thereupon designate seven justices of the supreme court to act as associate judges, for the time being, of the court of appeals, and to form a second division of said court, and who shall act as such until all the causes upon the said calendar at the time of the making of such certificate are determined, or the judges of said court, elected as such, shall certify to the governor that said causes are substantially disposed of, and on receiving such certificate, the governor may declare said second division dissolved, and the designation of justices to serve thereon shall thereupon expire. The second division of said court hereby authorized to be constituted, shall be competent to determine any causes on said calendar which may be assigned to such division by the court composed of judges elected to serve in the court of appeals, and that court may at any time before judgment direct any of the causes so assigned to be restored to its calendar for hearing and decision. The rules of practice in both divisions shall be the same. Five members of the court shall be sufficient to form a quorum for said second division, and the concurrence of four shall be necessary to a decision. The judges composing said second division shall appoint from their number a chief judge of such division, and the governor may from time to time, when in his judgment the public interests may require, change the designation of any justice of the supreme court to serve in such division, and may fill any vacancy occurring therein, by designating any justice of the supreme court to fill such vacancy. Said second division may appoint and remove a crier and such attendants as may be necessary. The judges composing said second division shall not, during the time of their service therein, exercise any of the functions of justices of the supreme court, nor receive any salary or compensation as such justices, but in lieu thereof shall during such term of service receive the same compensation as the associate judges of the court of appeals. They shall have power to appoint the times and places of their sessions, within this state, and the clerk and reporter of the court of appeals shall be clerk and reporter of said second division.†

* Article 16, added by vote of the people, November 3, 1874. Went into effect January 1, 1875.

† Added to article 6, section 6, *ante*, p. 95, by vote of the people, November 6, 1888. Went into effect January 1, 1889.

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TO THE

CONSTITUTION OF THE STATE OF NEW-YORK.

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first election of. ?	14	2	quorum	6	2
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from king of Great Britain	1	18	vacancies, how filled	6	2
Habeas corpus, not to be sus- pended, except, &c.	1	4	when governor may appoint to fill	6	3
Hamilton county, to elect mem- bers with Fulton.	3	5	appointees to fill, term office powers and jurisdiction, not suspended in certain cases	6	3
Impeachment, articles of, pre- ferred against judicial of- ficer, effect of.	6	1	shall not sit in review of case decided by him....	6	8
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concurrence of two-thirds necessary to convict....	6	1	votes given for, to be void.	6	10
court for trial of, of whom composed	6	1	may be removed by concur- rent resolution of both houses of legislature....	6	11
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	Art.	Sec.		Art.	Sec.
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those in office in 1847 allowed to receive fees....	14	11	compensation.....	6	18
Jurisdiction of courts, when to be transferred.....	14	5	not to be diminished during term of office.....	6	13
Jurors, drawing, &c., of.....	3	18	question as to manner of appointment to be submitted to people.....	6	17
Jury, right of trial by, secured, when waived.....	1	2	may not receive to his own use any fee or perquisites of office.....	6	21
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Justices, certain, first election of.....	14	4	may not serve after seventy years of age.....	6	13
Justice of the old supreme court, office of, abolished to act till July, 1848.....	14	8	to appoint reporter.....	6	23
to act till July, 1848.....	14	6	King of Great Britain, grants of land by.....	1	18
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			each house to judge of elections, &c.....	3	10
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Legislature, each house not to			Lieutenant-governor, commis-		
adjourn without consent.	3	11	sioner of the land office...	5	5
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cured	3	12	fund	5	5
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vate claim	3	19	nor	6	1
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cancies in office.....	10	5	Measures and weights, stand-		
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cers.	10	7	cate by, to the legislature.	4	4
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ing officers.....	11	6	scruples.....	11	1
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Libel, truth to be given in evi-			appointed.....	11	3
dence	1	8	time of choosing militia		
law and facts to be deter-			officers	11	4
mined by the jury	1	8	officers, how commissioned	11	5
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ness, etc	1	3	mode of choosing officers.	11	6
Lieutenant-governor, election			Money, not to be paid without		
and tenure of office....	4	1	appropriation, in two		
qualifications and eligibil-			years	7	8
ity.....	4	7	when borrowed, how used.	7	10
president of the senate and			when borrowed, how used.	7	11
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quisites.....	4	8	acts	8	1

	Art.	Sec.		Art.	Sec.
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Municipalities, restriction of taxation, debt, etc.....	8	9	in banking corporations..	8	7
the same.....	8	11	Petition, right of, not to be abridged.....	1	10
Names, change of.....	3	18	Political year, when to begin..	10	6
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courts in, to continue until altered.....	14	12	pro tem., when chosen....	3	10
superior court continued until altered.....	14	12	when to act as governor...	4	7
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compensation of judges, expenses, how defrayed.	6	12	without just compensation, value to be ascertained by jury or commissioners...	1	6
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judges, term of office of,	6	12	ultimate, in lands, possessed by the state.....	1	11
Oath of office, form of, no other test required.....	6	13	rights of, not affected.....	1	18
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offering a bribe to, a felony attempt to bribe.....	15	1	Qualifications of electors.....	1	5
county, how to be elected or appointed.....	15	2	Qualification of members and election, each house to determine.....	2	1
city and town, how to be elected or appointed....	10	2	Quarter sales to be void.....	3	10
other, elected or appointed as law shall direct.....	10	2	Question on bill to borrow money, how put.....	1	15
removal of other than judicial, local or legislative..	10	7	Question to be submitted to people; election or appointment of judges, justices, &c.....	7	12
militia, how chosen.....	10	2	Questions to be submitted; election or appointment of judge of court of appeals and justice of supreme court.....	6	17
major-generals, &c.....	11	3	Quorum, majority of each house what to constitute in court of appeals.....	8	10
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Pardons and commutations, &c. laws may be passed regulating mode of applying for.....	4	5			
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	Art.	Sec.		Art.	Sec.
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Removal of officers, other than			civil appointments.....	3	7
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tive	10	7	cates seat of	3	8
Rent and services, certain,			majority to constitute a		
saved and protected....	1	12	quorum	3	10
Reporter of court of appeals,			to determine its own rules,		
to be appointed by			and judge of elections,		
court	6	2	&c	3	10
of supreme court to be ap-			to keep and publish jour-		
pointed	6	23	nal, and open doors....	3	11
Reports of decisions to be pub-			not to adjourn without con-		
lished	6	23	sent of assembly	3	11
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Reprives, and pardons for of-			majority requisite to pass		
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be regulated by law....	4	5	bills to be taken by ayes		
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Residence, of electors, what			vened	4	4
shall be	2	3	president of, and president	3	10
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Resolutions, certain, law of the			ments	6	1
state	1	17	may remove militia officers		
Revenues of canals, provisions			on recommendation of		
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Revenues of municipalities not			of the governor	11	3
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Sale of certain canals forbidden	7	6	ernor and	6	9
proceeds of sales of other			Sheriffs, election and tenure of		
canals, how applied....	7	6	office	10	1
Salt springs, not to be sold...l.	7	7	vacancy in office of	10	5
lands contiguous, may be			to hold no other office, and		
sold	7	7	ineligible for next term.	10	1
Savings banks, charters of....	8	4	to renew security, and in		
not to have capital stock..	8	4	default, office vacant...	10	1
trustees not to be interested			county not to be responsi-		
in profits	8	4	ble for acts of	10	1
School fund, capital inviolate,			governor may remove, and		
and revenues how ap-			to be heard in defense...	10	1
plied	9	1	time of election of	10	4
Secrecy of legislative proceed-			incumbent to hold unexpir-		
ings, when allowed	3	11	ed term	14	10
Secretary of state, election and			Sinking fund, annual payments		
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compensation, not to re-			the same	7	2
ceive fees	5	1	those provisions having		
commissioner of the land			been fulfilled canals to		
office	5	5	be free	7	3
of state, commissioner of			and maintained by taxation	7	3
the canal fund	5	5	dues from incorporated		
member of the canal board	5	5	companies, part of	7	4
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Senate, number of senators....	3	2	ation	7	5
who ineligible to	3	8	to be invested	7	13
districts described	3	8	not to be diverted	7	13
same, when and how al-			Soldiers may vote	2	1
tered, not to divide coun-			Speaker of the assembly, com-		
ties in forming	3	4	missioner of the land		
compensation	3	6	office	5	5

	Art.	Sec.		Art.	Sec.
Speaker of the assembly, compensation of.....	3	6	Supreme court justices, not to hold other office, etc....	6	10
Specie payments of banks, not to be suspended.....	8	5	number of.....	6	6
Specie payments, of bank bills to be secured.....	8	6	additional justices.....	6	28
Speech, freedom of, secured... in legislative debate.....	1	8	official term of.....	6	13
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State, not to loan its credit.... may create \$1,000,000 debt. not to loan its money or credit.....	7	9	special terms and circuit courts may be held by... vacancies in office of, how filled.....	6	7
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to be held in each judicial district.....	6	28	Tax, for payment of canal debt. law imposing, to state distinctly object of.....	7	5
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decisions to be free for publication to all.....	6	23	Testimony in equity cases, how taken.....	6	8
justices, how chosen.....	6	13	Three-fifths when necessary for quorum.....	3	21
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			Tolls on canals, abolished....	7	3
			Town, not to loan its money or credit.....	8	11
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			Towns, not to contract debts except for town purposes..	8	11
			Town officers to be elected or appointed.....	10	2
			Travel of members of the legislature, compensation for.....	3	6
			Treason, governor may suspend execution of sentence....	4	5
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commissioner of canal fund	5	5	officers in, to be elected or appointed.....	10	2
member of the canal board may be suspended by governor and vacancy supplied.....	5	7	courts in, to continue until altered.....	14	12
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Treasury, no money to be paid from, without appropriation.....	7	8	not to loan their money or credit.....	8	11
Two-thirds of all elected to pass certain bills.....	1	9	not to become owners of bonds, etc.....	8	11
of all present on bill returned by governor.....	4	9	not to contract debts, except, etc.....	8	11
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Vacancy in office of treasurer..	5	7	Weights and measures, standard of, how supplied....	5	8
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ACTS RELATING TO THE REVISED STATUTES.

L. 1828, Chap. 20.

SECOND SESSION.

AN ACT concerning the Revised Statutes.

SECTION 1. The act passed on the fourth day of December, one thousand eight hundred and twenty-seven, entitled "An act concerning the territorial limits and divisions, the civil polity, and the internal administration of this state," consisting of twenty chapters, shall be known and distinguished as the first part of the Revised Statutes. First part
of the Re-
vised Stat-
utes.

§ 2. The act passed at the present meeting of the legislature entitled "An act relative to the acquisition, the enjoyment and the transmission of property, real and personal; to the domestic relations, and other matters connected with private rights," consisting of eight chapters, the first of which was passed at the present meeting of the legislature, and the other chapters were passed on the fourth day of December, one thousand eight hundred and twenty-seven, shall be known and distinguished as the second part of the Revised Statutes. Second
part.

§ 3. The act passed at the present meeting of the legislature, entitled "An act concerning courts and ministers of justice, and proceedings in civil cases," consisting of ten chapters, shall be known and distinguished as the third part of the Revised Statutes. Third part.

§ 4. The act passed at the present meeting of the legislature, entitled "An act concerning crimes and punishments; proceedings in criminal cases; and prison discipline," consisting of three chapters, shall be known and distinguished as the fourth part of the Revised Statutes. Fourth
part.

§ 5. The following chapters and parts of chapters, of the said first part of the Revised Statutes, as originally passed, are declared to have commenced and taken effect on the first day of January, one thousand eight hundred and twenty-eight, viz.: Chapters
which took
effect in
January,
1828.

1. Chapter six, entitled "Of elections, other than for militia and town officers:—"

2. Chapter eight, entitled "Of the duties of the executive officers of the state, and of various matters connected with their respective departments:—"

3. Chapter nine, entitled "Of the funds, revenue, expenditures and property of the state, and the administration thereof," except section one hundred and eighty-six, of the ninth title thereof, originally passed as section one hundred and eighty-one, which section shall take effect on the first day of January, one thousand eight hundred and twenty-nine; and the forfeiture therein mentioned, shall not take effect until six months after the said section shall be in force as a law.

4. Chapter ten, entitled "Of the militia and the public defence."

5. Chapter thirteen, entitled "Of the assessment and collection of taxes."

6. Chapter fourteen, entitled "Of the public health:"

7. The second title of chapter fifteen, entitled "Of public instruction," which title relates to the common schools:

8. Chapter sixteen, entitled "Of highways, bridges and ferries."

9. Chapter eighteen, entitled "Of incorporations."

Ib., May, 1898.

§ 6. The seventeenth chapter of the said first part of the Revised Statutes, entitled "Of the regulation of trade in certain cases," as the same was originally passed, is declared to have commenced and taken effect on the first day of May, one thousand eight hundred and twenty-eight.

Additions and alterations.

§ 7. The additions and alterations, in the chapters enumerated in the two preceding sections, made in pursuance of acts of the legislature, are declared to have taken effect at the several times when the statutes directing such additions and alterations, were respectively passed.

Chapters to take effect in January, 1890.

§ 8. The remaining chapters and parts of chapters of the said Revised Statutes, not specified in the three last preceding sections, and respecting the commencement of which no direction is hereinbefore given, shall severally commence and take effect as laws, on the first day of January, one thousand eight hundred and thirty.

Construction of term "laws now in force."

§ 9. The term "laws now in force," whenever it occurs in the Revised Statutes, shall be construed to mean the statutes and other laws in force immediately previous to the final passage of the chapter containing such term.

Ib., terms "heretofore" and "hereafter."

§ 10. Whenever the term "heretofore" occurs in any chapter or title of the Revised Statutes, it shall be construed to mean any time previous to the day when such chapter or title shall commence and take effect; and whenever the term "hereafter" occurs, it shall be construed to mean the time after such chapter or title shall commence and take effect.

Ib., plural words, &c.

§ 11. Whenever, in the Revised Statutes, or in any other statute, words importing the plural number are used in describing or referring to any matters, parties, or persons, any single matter, party, or person shall be deemed to be included, although distributive words may not be used; and when any subject, matter, party, or person is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included, and these rules of construction shall apply in all cases, unless it be otherwise specially provided, or unless there be something in the subject or context repugnant to such construction.

Ib., repugnant provisions, &c.

§ 12. For the purposes of construction, the said Revised Statutes shall be deemed to have been passed on the same day, notwithstanding they may have passed or taken effect at different times; but, if any provisions in the different parts or chapters are repugnant to each other, that which shall be the last in the order hereinbefore declared shall prevail, and so much of any prior provision as is inconsistent with such last provision shall be deemed repealed thereby.

Revised Statutes to be certified.

§ 13. When the printing of the Revised Statutes shall be completed, the revisers, or any two of them, shall certify the same to have been examined and compared by them with the original acts, and with the acts amending such originals; and shall deposit a copy so certified in the office of the secretary of state, which shall be conclusive evidence of such statutes.

Certificate, how to be published.

§ 14. Such certificate shall be printed in each copy of the Revised Statutes published under the direction of the revisers; and every copy so printed by the printers employed for that purpose, in which such certificate shall be inserted, may be read in evidence in all courts of justice, and in all proceedings before any officer, board or body in this state.

[Sections 15-31 amend, or relate to printing, etc., the Revised Statutes.]

§ 32. This act shall be published with, and as a part of, the Revised Statutes.

This act
now pub-
lished.

[Section 33 is omitted as temporary.]

L. 1828, Chap. 21.

AN ACT to repeal certain acts and parts of acts.

SECTION 1. From and after the thirty-first day of December, in the year one thousand eight hundred and twenty-nine, the following acts and parts of acts, heretofore passed by the legislature of this state, shall be repealed, viz.:

[Here follows an enumeration of the statutes and parts of statutes repealed.]

§ 2. Nothing herein contained, shall be construed to repeal any statute consolidated and published in the Revised Statutes; nor any act of the legislature passed since the ninth day of September, one thousand eight hundred and twenty-eight, unless such act be consolidated and re-enacted in the said Revised Statutes.*

Certain
statutes
and parts
of statutes
repealed
from and
after the
31st Dec.,
1829.

Nothing in
this act to
be con-
strued as
repealing
Revised
Statutes,
&c.

§ 3. None of the statutes of England or Great Britain shall be considered as laws of this state; nor shall they be deemed to have had any force or effect in this state, since the first day of May, in the year one thousand seven hundred and eighty-eight.

Statutes of
England and
Great
Britain,
not in
force.

§ 4. No statute passed by the government of the late colony of New-York, shall be considered as a law of this state.

Nor stat-
utes of
colony of
New York.
Saying
clause, as
to acts
done, rights
accrued,
&c.

§ 5. The repeal of any statutory provision by this act, shall not affect any act done, or right accrued or established, or any proceeding, suit, or prosecution, had or commenced in any civil case, previous to the time when such repeal shall take effect; but every such act, right and proceeding, shall remain as valid and effectual, as if the provision so repealed had remained in force.

§ 6. No offence committed, and no penalty or forfeiture incurred, previous to the time when any statutory provision shall be repealed, shall be affected by such repeal; except that where any punishment, forfeiture, or penalty shall have been mitigated by the provisions of the Revised Statutes, such provisions shall apply to and control any judgment to be pronounced, after the said statutes shall take effect, for any offence committed before that time.

Ib., as to
offences
committed
or penalties
incurred.

§ 7. No prosecution for any offence, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, shall be affected by such repeal; but the same shall proceed in all respects, as if such provision had not been repealed; except that all such proceedings had after the time when the Revised Statutes take effect, shall be conducted according to the provisions of the said statutes, and shall be in all respects subject to the said provisions.

Ib., as to
prosecu-
tions for
offences or
penalties.

§ 8. All statutes and parts of statutes which were repealed or abrogated by, or were repugnant to, any law hereby repealed, and which have not been re-enacted and consolidated in the Revised Statutes, shall continue to be so repealed, and shall be deemed abrogated.

Statutes
heretofore
repealed
to continue
so re-
pealed.

§ 9. The repeal by this act, of any statute or part of a statute heretofore repealed, shall not be construed as a declaration or implication that such statute or part of a statute has been in force at any time subsequent to such first appeal.

Though
repealed
by this act.

* The statutes spoken of in the first clause of this section as "published in the Revised Statutes," are those portions of the first part which took effect on the 1st of January and 1st of May, 1829, and which were published by the state printer in December, 1827.

Where a statute not repealed refers to a repealed statute.

§ 10. Where any statute not hereby repealed, refers to and adopts any statute or part of a statute which is herein repealed, the statute or part of a statute so referred to and adopted, shall not be deemed repealed by the provisions of this act, but shall be in force so far only as the same shall have been so adopted, and for no other purpose, and subject to the provisions of the two next sections.

Ib., where the statute so referred to, has been revised.

§ 11. But if the statute or part of a statute so referred to and adopted, shall have been revised and consolidated in the Revised Statutes, all provisions contained therein repugnant to, or inconsistent with those of the said Revised Statutes, shall be deemed repealed at the time specified in this act; and every such provision so referred to and adopted, which shall be modified by the Revised Statutes, shall be deemed to be so modified in respect to any use or purpose, for which such provision is herein declared to be in force, from and after the time when the Revised Statutes shall take effect.

Ib., where a rule of law is referred to which has been abrogated.

§ 12. Where any statute or part of a statute, which is not hereby repealed, refers to and adopts any provision or rule of law which is abrogated or modified by the Revised Statutes, such provision or rule shall be deemed to be so abrogated or modified, as the case may be, as well in respect to such statute or part of a statute not repealed, as otherwise, from and after the time when the Revised Statutes shall take effect.

Certain provisions in former acts repealed.

§ 13. The seventh section of the "act concerning the Revised Statutes, passed at the present meeting of the legislature," passed December 4, 1827, is hereby repealed; together with so much of the said act, as declares that the chapters of the first and second parts of the Revised Statutes therein specified, shall commence and take effect on the first day of January, one thousand eight hundred and twenty-nine.

Appointments made under acts repealed, not to be affected.

§ 14. The repeal by this act of any statutory provision, which is consolidated and re-enacted in the Revised Statutes, by virtue of which any appointment shall have been made, or any office is or shall be held, shall not be construed to vacate such office, or in any way affect such appointment; but the said appointments shall continue, and the said offices shall be held subject to the provisions of law in force after the repeal of such statutory provision.

Provision as to offices abolished by such repeal.

§ 15 But where any office is abolished by the repeal of any act, and such act is not consolidated and re-enacted in the Revised Statutes, such office shall cease at the time such repeal shall take effect.

L. 1830, Chap. 259.

AN ACT relative to the printing of the Revised Statutes.

Revised Statutes may be printed.
Certificate of secretary of state.

SECTION 1. Any person or persons residing in the state of New-York may print and publish the whole or any part of the Revised Statutes of this state; but to entitle any copy of a law so published to be read in evidence, there shall be contained in the same book or pamphlet a printed certificate of the secretary of state, or of two of the revisers, that such copy is a correct transcript of the text of the Revised Statutes, as published, except such typographical errors in the original as may be corrected in such copy, and except such parts as shall have been altered by acts of the legislature; and that with respect to such parts it conforms to the acts by which such alterations shall have been made.

Paging to be preserved.

§ 2. The editions to be printed under the provisions of this act shall be paged in conformity to the first edition published under the authority of this state.

[Supplementary Title.]

TITLE 6^B.*Of the Judicial Districts.***L. 1847, chap. 241 — An act to divide the state into judicial districts.**

Judicial districts. SECTION 1. The state is hereby divided into eight judicial districts, pursuant to the provisions of the fourth section of the sixth article of the constitution, which districts shall be arranged as follows:

First. The first judicial district shall consist of the city and county of New York:

Second. The second judicial district shall consist of the counties of Richmond, Suffolk, Queens, Kings, Westchester, Orange, Rockland, Putnam and Dutchess:

Third. The third judicial district shall consist of the counties of Columbia, Sullivan, Ulster, Greene, Albany, Schoharie and Rensselaer:

Fourth. The fourth judicial district shall consist of the counties of Warren, Saratoga, Washington, Essex, Franklin, St. Lawrence, Clinton, Montgomery, Hamilton, Fulton and Schenectady:

Fifth. The fifth judicial district shall consist of the counties of Onondaga, Oneida, Oswego, Herkimer, Jefferson and Lewis:

Sixth. The sixth judicial district shall consist of the counties of Otsego, Delaware, Madison, Chenango, Broome, Tioga, Chemung, Tompkins and Cortland:

Seventh. The seventh judicial district shall consist of the counties of Livingston, Wayne, Seneca, Yates, Ontario, Steuben, Monroe and Cayuga:

Eighth. The eighth judicial district shall consist of the counties of Erie, Chautauqua, Cattaraugus, Orleans, Niagara, Genesee, Allegany and Wyoming.

20 N. Y., 452.

L. 1857, Chap. 485 — An act to annex the county of Schuyler to the sixth judicial district, and to provide for courts therein.

Schuyler county added to sixth judicial district. SECTION 1. The county of Schuyler is hereby annexed to and shall form a part of the sixth judicial district of this state.

[Remainder of the section omitted as obsolete.]

L. 1876, Chap. 24 — An act to alter the first and second judicial districts of the state as established by chapter two hundred and forty-one of the laws of eighteen hundred and forty-seven, entitled "An act to divide the state into judicial districts," so as to conform the same to the boundaries of the city of New York and of the county of Westchester as now constituted by law.

First judicial district altered. SECTION 1. The first judicial district of the state shall consist of the city of New York, as the same has been constituted by law since the first day of January, eighteen hundred and seventy-four. The second judicial district shall consist of the counties of Richmond, Suffolk, Queens, Kings, Westchester, as the same has been constituted by law since the first day of January, eighteen hundred and seventy-four, Orange, Rockland, Putnam and Dutchess.

[The effect of this provision was to enlarge the first and diminish the second judicial district, in accordance with the transfer from Westchester to New York county, of the towns of West Farms, Morrisania, and Kingsbridge, by L. 1873, ch. 613.]

L. 1883, Chap. 329—An act to provide for organizing in the supreme court five general terms thereof, and for the election of justices of that court in addition to the justices now in office.

Judicial departments; general terms to be held by justices to be designated by governor.

SECTION 1. The state is hereby divided into five judicial departments. The first department shall consist of the first judicial district; the second department of the second judicial district; the third department of the third and fourth judicial districts; the fourth department of the fifth and sixth judicial districts; and the fifth department of the seventh and eighth judicial districts. On and after the first Monday in June, in the year one thousand eight hundred and eighty-four, there shall be a general term of the supreme court in each judicial department hereby created, composed of a presiding justice and not less than two nor more than three associate justices who shall be designated by the governor from the whole bench of justices for the times and in the manner provided by law for designating presiding and associate justices to hold general terms in the judicial departments now existing; providing, however, that those designated to hold general terms under existing laws who shall be such on the first Monday of June, eighteen hundred and eighty-four, shall be presiding justices and associate justices of the general terms organized under this act in the department hereby created in which they shall respectively reside, or in which they shall then be such presiding and associate justices, during the term for which they shall have been so designated, except that the additional presiding justice required by this act may be designated from such associate justices, and in the fourth department there shall be not more than two associate justices of the said general term; but upon the application of two of the judges of the general term of the fourth department the governor may appoint a third associate justice to serve for any particular term.

Pending causes transferred; governor to appoint general terms; existing general terms to meet and dispose of causes. § 2. On the said first Monday in June, eighteen hundred and eighty-four, all causes and matters then pending in the general terms of the supreme court organized under existing laws, and all matters which according to law might be brought before them, are hereby transferred to and shall be cognizable before the general terms organized under this act, in the judicial department in which the venue of such causes and matters is laid. In the cases in which existing judicial departments are hereby divided, the governor, on or before the first Monday of June, eighteen hundred and eighty-four, shall appoint in the manner provided by section two hundred and thirty-four of the Code of Civil Procedure, such general terms of the supreme court in the departments hereby created as in his opinion public interest will require to be held during the year eighteen hundred and eighty-four. The general terms which shall exist immediately prior to the said first Monday of June, eighteen hundred and eighty-four, shall meet on some day, which may be either before or after said first Monday, and which may be designated by the justices composing the same, for the purpose of deciding or otherwise disposing of the causes and matters which may have been argued before or submitted to them. Appeals may be taken from the judgments and orders entered in such decisions in the same manner as in like cases from judgments and orders of the general terms organized under this act. [*Thus amended by L. 1884, ch. 311.*]

Election of justices. § 3. At the general election to be held in this state on the sixth day of November, in the year one thousand eight hundred and eighty-three, there shall be elected by the electors of the first judicial district, two justices of the supreme court of the state of New York; by the electors of the second judicial district, one justice of said court; by the electors of the third judicial district, one justice of said court; by the electors of the fourth judicial district, one justice of said court; by the electors of the fifth judicial district, two justices of said court;

by the electors of the sixth judicial district, one justice of said court; by the electors of the seventh judicial district, two justices of said court; and by the electors of the eighth judicial district, two justices of said court.

Vacancies. § 4. Vacancies in office of the justices so elected shall be filled, and the successors in office of such justices shall be elected, as provided in article sixth of the constitution of the state.

Repeal. § 5. All acts and parts of acts inconsistent with this act are hereby repealed.

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CHAPTER IV.

OF THE RIGHTS OF THE CITIZENS AND INHABITANTS OF THIS STATE.

[Supplement to Chapter 4.
Of Indians within the state.]

- Sec.** 1. All authority derived from the people.
 2. Taxes how levied.
 3. Right to keep arms.
 4. When citizens may be compelled to perform military service.
 5. Certain persons to be excused from service.
 6. Quartering of soldiers.
 7. Rights of citizens secured.
 8. Trial by jury preserved; new courts to proceed according to the course of the common law.
 9. Religious worship to be free.
 10. The writ of *habeas corpus* not to be suspended.
 11. Search warrants regulated.
 12. Accusations for criminal offences, how to be made.
 13. Principles of civil liberty declared respecting proceedings in criminal cases, and concerning the private right of property.
 14. Rights of persons accused of crimes.
 15. Justice to be speedily administered, and process to be granted to all persons.
 16. Fines to be reasonable and proportioned to the offence.
 17. Excessive bail not to be required, nor unusual punishments inflicted.
 18. Elections to be free; no one to be disturbed in voting.
 19. Right of petitioning declared.
 20. Liberty of speech and of the press declared.
 21. Truth to be given in evidence in prosecutions for libels, and jury to determine both law and fact.

All authority
derived
from the
people.

SECTION I. No authority can, on any pretence whatsoever, be exercised over the citizens of this state, but such as is or shall be derived from and granted by the people of this state.

[1 R. L., 47, § 1.]

Taxes how
levied.

§ 2. No tax, duty, aid or imposition whatsoever, except such as may be laid by a law of the United States, can be taken or levied within this state, without the grant and assent of the people of this state, by their representatives in senate and assembly; and no citizen of this state can be by any means compelled to contribute to any gift, loan, tax, or other like charge, not laid or imposed by a law of the United States, or by the legislature of this state.

[1 R. L., 48, § 12.]

Right to
keep arms.

§ 3. A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms cannot be infringed.

[2d amendt. Const. U. S.]

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Military
service by
citizens.

§ 4. No citizen of this state can be constrained to arm himself, or to go out of this state, or to find soldiers or men of arms, either horsemen or footmen, without the grant and assent of the people of this state, by their representatives in senate and assembly,

except in the cases specially provided for by the constitution of the United States.

[1 R. L., 48, § 12.]

§ 5. All such inhabitants of this state of any religious denomination whatever, as from scruples of conscience may be averse to bearing arms, are to be excused therefrom by paying to the state an equivalent in money; and the legislature is required to provide by law for the collection of such equivalent, to be estimated according to the expense, in time and money, of an ordinary able-bodied militia-man.

Who to be excused.

[Const., art. 7, § 5.]

§ 6. No soldier can in time of peace be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Quartering soldiers.

[1 R. L., 48, § 13; 3d amendt. to Const. U. S.]

§ 7. No member of this state can be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

Rights secured.

[1 R. L., 47, §§ 2 and 5; Const., art. 1, § 1.]

§ 8. The trial by jury, in all cases in which it has heretofore been used, is to remain inviolate forever; and no new court can be instituted but such as shall proceed according to the course of the common law, except such courts of equity, as the legislature, by the constitution of this state, is authorized to establish.

Trial by jury. New courts, &c.

[Const., art. I, § 2.]

§ 9. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, is forever to be allowed in this state to all mankind; but the liberty of conscience so secured, is not to be so construed, as to excuse acts of licentiousness, or to justify practices inconsistent with the peace or safety of this state.

Religious worship.

[Const., art. I, § 8.]

§ 10. The privilege of the writ of *habeas corpus* cannot be suspended, unless when in cases of rebellion or invasion, the public safety may require its suspension.

Writ of *habeas corpus*.

[Const., art. 1, § 4.]

§ 11. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, ought not to be violated; and no warrants can issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Search warrants. 39 Barb., 57.

[4th amendt. Const. U. S.]

§ 12. No person can be held to answer for a capital or otherwise infamous crime (except in cases of impeachment; and in cases of the militia when in actual service, and of the land and naval forces in time of war, or which this state may keep, with the consent of congress, in time of peace; and in cases of petit larceny, under the regulation of the legislature), unless on presentment or indictment

Accusations of crimes.

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3 N. Y.
Crim. R.,
79; 25 Hun,
519.

of a grand jury; and in every trial on impeachment or indictment, the party accused is to be allowed counsel as in civil actions, or he may appear and defend in person.

[Const., art. I, § 6.]

Criminal
proceed-
ings.
Private
property.
42 Hun, 103.

§ 13. No person can be subject for the same offence, to be twice put in jeopardy of life or limb; nor can he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor can private property be taken for public use, without just compensation.

[Const., art. I, § 6.]

Rights of
accused
persons.

§ 14. In all criminal prosecutions, the accused has a right to a speedy and public trial, by an impartial jury, and is entitled to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor.

[6th amendt. Const. U. S.]

Justice to
be speedy.
Process.

§ 15. Neither justice nor right should be sold to any person, nor denied, nor deferred; and writs and process ought to be granted freely and without delay, to all persons requiring the same, on payment of the fees established by law.

[1 R. L., 48, § 6.]

Fines.

§ 16. No citizen of this state ought to be fined or amerced without reasonable cause, and such fine or amercement should always be proportioned to the nature of the offence.

[1 R. L., 48, § 7.]

Bail, &c.
1 Edm. Sel.
Cas., 245.

§ 17. Excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

[1 R. L., 48, § 8; 8th amendt. to Const. U. S.]

Elections.

§ 18. All elections ought to be free; and no person by force of arms, malice, menacing, or otherwise, should presume to disturb or hinder any citizen of this state in the free exercise of the right of suffrage.

[1 R. L., 48, § 9.]

Right to
petition.

§ 19. It is the right of the citizens of this state to petition the governor, or either house of the legislature; and all commitments and prosecutions for such petitioning are illegal.

[1 R. L., 48, § 10.]

Liberty of
speech, &c.
6 Barb., 52.

§ 20. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law can be passed to restrain or abridge the liberty of speech or of the press.

[Const., art. I, § 8.]

Prosecu-
tions for
libel, pro-
ceedings.

§ 21. In all prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous is true, and was published with good motives and for justifiable ends, the party is to be acquitted; and the jury have the right to determine the law and the fact.

[Const., art. I, § 8.]

L. 1873, Chap. 186—An act to provide for the protection of citizens in their civil and public rights.

[Sections 1 and 2 repealed by L. 1886, ch. 593.]

Repeal. § 3. Discrimination against any citizen on account of color, by the use of the word "white," or any other term in any law, statute, ordinance or regulation now existing in this state, is hereby repealed and annulled.

11 Abb. N. C., 187; 28 Alb. L. J., 471; 43 Hun, 538; 93 N. Y., 438.

L. 1878, Chap. 212—An act to establish the right of citizens of this state to carry on their business in all parts thereof.

Discrimination against residents of other parts of state. SECTION 1. It shall not be lawful for the authorities of any county, city or village, to impose upon the inhabitants of any other county, city or village within this state, carrying on or desiring to carry on, any lawful trade, business or calling within the limits thereof, any restriction or condition whatever, except such as may be necessary for the proper regulation of such trade, business or calling, and such as apply equally and impartially to the citizens of all parts of the state alike, and all ordinances in violation of the provisions of this act are hereby declared to be null and void. But the provisions of this act shall not apply to the ordinances or regulations of any county, city or village in this state, in reference to travelling circuses, shows and exhibitions. [*Thus amended by L. 1879, ch. 417.*]

L. 1880, Chap. 298—An act to protect the rights of citizens of this state owning and holding claims against other states.

Citizens having claims against other states may assign claim to state. SECTION 1. Any citizen of this state, being the owner and holder of any valid claim against any of the United States of America, arising upon a written obligation to pay money, made, executed and delivered by such state, which obligation shall be past due and unpaid, may assign the same to the state of New York, and deliver the assignment thereof to the attorney-general of the state. Such assignment shall be in writing, and shall be duly acknowledged before an officer authorized to take the acknowledgment of deeds, and the certificate of such acknowledgment shall be duly indorsed upon such assignment before the delivery thereof. Every such assignment shall contain a guaranty, on the part of the assignor, to be approved by the attorney-general, of the expenses of the collection of such claim, and it shall be the duty of the attorney-general, on receiving such assignment, to require, on behalf of such assignor, such security for said guaranty, as he shall deem adequate.

Attorney-general to prosecute action. § 2. Upon the execution and delivery of such assignment in the manner provided for in section one of this act, and furnishing the security as in said section provided, and the delivery of such claim to him, the attorney-general shall bring and prosecute such action or proceeding

in the name of the state of New-York, as shall be necessary for the recovery of the money due on such claim, and the said attorney-general shall prosecute such action or proceeding to final judgment, and shall take such proceedings after judgment as may be necessary to effectuate the same.

Proceeds to be delivered to treasurer for use of assignor. § 3. The attorney-general shall forthwith deliver to the treasurer of the state, for the use of such assignor, all moneys collected upon such claim, first deducting therefrom all expenses incurred by him in the collection thereof, and said assignor, or his legal representatives, shall be paid said money by said treasurer upon producing the check or draft therefor of the attorney-general to his or their order and proof of his or their identity.

L. 1881, Chap. 400—An act to prevent discriminations against any person on account of his race, creed, or color.

No discrimination allowed on account of race, creed, or color. SECTION 1. No person shall be denied the full and equal enjoyment of the accommodations, advantages, facilities and privileges of all hotels, inns, taverns, restaurants, public conveyances on land or water, theaters and other places of public resort or amusement, because of race, creed or color.

Penalty. § 2. Any person who shall violate the foregoing section by denying to any person, because of his race, creed or color, full enjoyment of any of the accommodations, advantages, facilities and privileges hereinbefore mentioned, or by aiding or inciting thereto, shall for every such offense be deemed guilty of a misdemeanor, and punished accordingly.

L. 1882, Chap. 216—An act in relation to the examination and admission to the bar of law students in certain cases.

Who may be admitted to practice. SECTION 1. Any male citizen of the United States twenty-one years of age, and of good moral character, who shall have graduated with the degree of bachelor of laws from any duly organized law school or law department of any university or college within this state prior to the first day of July, one thousand eight hundred and eighty-two, or who has been prevented from passing the examination preliminary to graduation with the degree of bachelor of laws in any duly organized law school or law department of any university within this state, by reason of his necessary absence from such university while a member of the legislature, shall on passing a satisfactory examination, as hereinafter provided, be entitled to admission to the bar of this state as attorney and counsellor at law, and licensed and authorized to practice as such in all the courts of the state.

Court to direct examination and admit to practice. § 2. On application of any such person to the supreme court at a general term thereof for examination and admission to the bar, and if he be a graduate, on production of his diploma or certificate of graduation, the court shall direct his examination by the standing committee on the examination of applicants for admission to the bar, or by such other committee as the court may appoint for such purpose, and shall make an order admitting to the bar of this state as attorney and counsellor at law any such applicant as shall have passed a satisfactory examination.

L. 1883, Chap. 522—An act in relation to the examination and admission to the bar in certain cases.

Any person having served a full term as surrogate may be admitted to the bar. SECTION 1. Any male citizen of this state of good moral character who shall have served a full term as surrogate of any county of this state shall on passing a satisfactory examination as hereinafter provided be entitled to admission to the bar of this state as attorney and counsellor at law, and licensed and authorized to practice as such in all the courts of the state.

Upon presentation of proof court to direct examination, etc. § 2. On application of any such person to the supreme court at a general term thereof, for examination and admission to the bar and the production of a certificate from the clerk of the county wherein such person has served as surrogate, showing that such person has served a full term as surrogate, or upon other satisfactory proof of such facts the court shall direct his examination by the standing committee on the examination of applicants for admission to the bar, or by such other committee as the court may appoint for such purpose, and shall make an order admitting to the bar of the state as attorney and counsellor at law any such applicants who shall have passed a satisfactory examination.

TITLE III.

Of Applications to the Legislature.

- Sec. 1. Persons intending to apply for new county, etc., to give notice of their applications.
2. Notice to be given of applications for acts of incorporation, etc.
 3. Notices how published, if no paper in county.
 4. Contents of the notice in the case of corporations.
 5. Contents in other cases.

SECTION 1. All persons applying to divide or alter the bounds of any county, city or village; or to erect a new county; or to incorporate a new city or village:

Certain applicants to give notice; notice how given. 7 Barb., 421.

And all persons applying for the removal of any court-house; or the imposing of a tax for making or improving a road, or for any other local purpose in any county, where all or any of the inhabitants of such county are proposed to be taxed:

Shall give notice of such intended application by advertisement to be published for at least six weeks successively, immediately before such application, or before the first day of the session at which the same is to be made, in a newspaper printed in the county or in each of the counties where the objects of such application are intended to be carried into effect, and also in case of intended application for the imposition of any tax as aforesaid, in the state paper.

[1 R. L., 268; L. 1818, 121.]

§ 2. Every association intending to apply to the legislature for an act of incorporation, and every corporation intending to apply for an alteration, amendment, or extension of its charter, shall cause the like notice of such application to be published in the state paper, and also in a newspaper printed in the county in which such corporation is intended to be, or shall have been, established.

(136)

ib.

[1 R. L., 268; L. 1818, 121.]

§ 3. If no newspaper be printed in a county in which any notice is required to be published, such notice shall be published in like manner, in the place nearest thereto in which a newspaper shall be printed.

ib.

[1 R. L., 268; L. 1818, 121.]

§ 4. If the application be for an act of incorporation, the notice shall specify the amount of the capital stock requisite to carry the objects of such incorporation into effect; and if the application be for an alteration in any charter already granted, the notice shall state specifically the alteration intended to be applied for.

Contents of notice.

[1 R. L., 268; L. 1818, 121.]

§ 5. The notice of all other applications, of which notice is required to be given, shall specify the nature and objects of such intended applications.

ib.

[1 R. L., 268; L. 1818, 121.]

L. 1829, Chap. 259 — An act relative to applications to the legislature for grants of escheated lands.

Notice of application. SECTION 1. Every person hereafter applying to the legislature for a release of lands escheated to the state, shall give the like notice of such application in the county where such lands may be situate, and in the state paper, as is required by the third title of the seventh chapter of the first part of the Revised Statutes.

L. 1829, Chap. 275 — An act requiring the publication of notices in certain cases.

Notices for constructing dams. SECTION 1. In all cases of applications to the legislature for the passage of laws authorizing the construction of dams, in or across the streams and waters of this state, which are by law public highways, like notices shall be given and published as are required to be given and published by the third title of the seventh chapter of the first part of the Revised Statutes, in cases of applications for acts of incorporation and in the other cases therein specified.

TITLE 4.**TITLE IV.***Of the Enactment and Promulgation of Statutes, and of the Time from which they take Effect.*

- SEC. 1.** Powers of the houses in regard to originating and amending bills.
 2. Assent of two-thirds necessary to certain bills.
 3. No bill deemed to have passed with two-thirds unless so certified.
 4. Every bill passed and certified to be presented to governor.
 5. Governor, if he disapprove, to return it with objections to the house where it originated.
 6. If two-thirds agree to pass it notwithstanding objections, to be so certified.
 7. Like proceeding in other house.
 8. In such cases yeas and nays to be entered on journals.
 9. If bill be not returned by governor within ten days, it became a law
 10. Secretary of state to receive and deposit laws in his office.
 11. To certify and endorse upon every bill the time it becomes a law
 12. Unless a different time be prescribed, laws to take effect on the twentieth day after their passage.
 13. Secretary of state to deliver copies of laws to state printer.

Powers of two houses.

SECTION 1. Any bill may originate in either house of the legislature; and all bills passed by one house may be amended by the other.

[Const., art. III, § 13]

Two-thirds bills.
 4 Hill, 384;
 2 Hill, 86.

§ 2. The assent of two-thirds of the members elected to each branch of the legislature is requisite to every bill appropriating the public monies or property for local or private purposes, or creating, continuing, altering or renewing any body politic or corporate.

[Abrogated by Const., art. III, § 15.]

Ib.
 33 N. Y.,
 284.

§ 3. No bill shall be deemed to have been passed by the assent of two-thirds of the members elected to each house, unless so certified by the presiding officer of each house.

[33 N. Y., 284.]

[157] Governor's assent.

§ 4. Every bill thus passed and certified, must, before it becomes a law, be presented to the governor; if he approves, he must sign it; and he shall endorse thereon a certificate of his approbation, and deliver the same so endorsed to the secretary of state.

[1 R. L., 458, § 1. See Const., art. IV, § 9.]

§ 5. If the governor do not approve the bill, he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it.

[The same.]

§ 6. If two-thirds of the members present shall agree to pass the bill, notwithstanding such objections, the presiding officer of such house shall endorse thereon a certificate of such passage by the number so required.

[The same.]

§ 7. The bill shall then be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of the members present it becomes a law, and the presiding officer shall endorse thereon a certificate of its passage by the number required, and deliver the bill to the secretary of state.

[The same.]

§ 8. In all such cases the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for and against the bill be entered on the journal of each house respectively.

[The same.]

§ 9. If a bill be not returned by the governor within ten days (Sundays excepted) after the same shall have been presented to him, it becomes a law in like manner as if he had signed it; unless the legislature, by their adjournment prevent its return, in which case it does not become a law.

[The same.]

§ 10. The secretary of state shall receive every bill which shall have passed the senate and assembly, and have been approved and signed by the governor, or which shall have become a law notwithstanding the objections of the governor, or which, not having been returned by the governor within ten days, shall have become a law; and shall deposit such laws in his office.

[1 R. L., 458, § 1.]

§ 11. He shall certify and endorse upon every such bill, the day, month and year, when the same so became a law, and such certificate shall be conclusive evidence of the facts therein declared.

[4 Hill. 384; 19 Abb. Pr. R., 431.]

§ 12. Every law unless a different time shall be prescribed therein, shall commence and take effect throughout the state, on and not before the twentieth day after the day of its final passage, as certified by the secretary of state.

[14 Abb., 134; 1 Rob., 145; 19 Abb. Pr., 431.]

§ 13. The secretary of state shall forthwith deliver a certified copy of each law, other than acts of incorporation, deposited in his office, and of his endorsement thereon, to the state printer, to be printed and published by him, in the manner prescribed in the eighth chapter of this act.

[The laws relating to the public printing now in force, are contained in the supplementary title 6^a of this chapter.]

TITLE 4.
Governor's
objections.

Proceed-
ings there-
on.

Yeas and
nays.

If not
returned.

Duty of
secretary
of state.
33 N. Y.,
378; 1 Rob.,
145; 19
Abb. Pr. R.,
431.

Ib.
19 Abb. Pr.
R., 431.

Time when
laws take
effect.
14 Abb. Pr.,
134; 1 Rob.,
145; 19
Abb. Pr.
431.

Copy for
publica-
tion.
[158]
1 Rob., 145;
19 Abb. Pr.
R., 431.

L. 1839, Chap. 263 — An act directing the secretary of state to furnish literary colleges with copies of the laws of the state of New York, and of the documents of the senate and assembly.

Duty of secretary of state. SECTION 1. The secretary of state is required hereafter to furnish annually each of the literary incorporated colleges of this state with one copy of the session laws of this state; and also with one copy of the documents of the senate, and one copy of the documents of the assembly; and the state treasurer shall pay on the warrant of the comptroller the amount of the expenses of carrying into execution the directions of this act.

L. 1842, Chap. 306 — An act in relation to the publication of the statutes of this state.

Indorsement not to be published. SECTION 1. It shall not be necessary for the secretary of state to furnish, nor for the state printer to publish, a copy of the certificate, which the secretary is required to indorse upon every bill, of the day, month, and year, when the same became a law.

How time and mode of passage of act to be indicated. § 2. In the publication of every law the secretary of state shall state when the same became a law, by inserting immediately under the title of the act the words, "Approved by the governor," and adding the month, day and year; and if the bill was certified by the presiding officers as having been passed by the assent of two-thirds of the members elected to each house, the secretary of state, after stating when the bill became a law, shall add the words, "Passed by a two-thirds vote." Except that in the case of laws which become such without the approval of the governor, the secretary of state shall, instead of the words "Approved by the governor," use the following words: "Became a law without the approval of the governor, in accordance with the provisions of article four, section nine of the constitution." And except that in the case of laws which become such notwithstanding the objections of the governor, instead of the words "Approved by the governor," he shall use the following words: "Became a law notwithstanding the objections of the governor, two-thirds of the members of each house having, in accordance with the provisions of article four, section nine of the constitution, duly passed the same." [*Thus amended by L. 1888, ch. 4.*]

Evidence thereof. § 3. The addition of the words, "by a two-third vote," shall be presumptive evidence that the bill was certified by the presiding officers as having been passed by the assent of two-thirds of the members elected to each house; and the absence of such words shall be presumptive evidence that the bill was not so certified by the presiding officers.

L. 1843, Chap. 98 — An act relative to the publication of the laws.

Certificate to session laws. SECTION 1. Each volume of the laws hereafter printed for the state shall contain the certificate of the secretary of state, to the effect that the said volume was printed under his direction.

Session laws when evidence. § 2. All laws passed by the legislature may be read in evidence from the volumes printed under the direction of the secretary of state, pursuant to the sixth section of the act entitled "An act to provide for the public printing," passed January 21, 1843, in the same manner and with the like effect as laws heretofore published by the state printer.

L. 1844, Chap. 176—An act to furnish copies of the statutes of this state to the several towns.

Laws destroyed by fire to be replaced. SECTION 1. Whenever it shall be proved to the satisfaction of the secretary of state that the revised statutes and session laws passed since 1830, belonging to any town, or either of the volumes of such statutes or laws have been destroyed by fire, he shall procure and furnish to the said town the said statutes and laws which may have been so destroyed, and the expenses thereof shall be paid by the treasurer, upon the warrant of the comptroller.

L. 1845, Chap. 280—An act for the publication of the session laws in two newspapers in each county of this state.

Laws of a general nature, how published. SECTION 1. All laws of a general nature, which shall hereafter be passed by the legislature of this state, shall be published in at least two newspapers in each county of this state where there is or may be hereafter two newspapers published; and in one newspaper in each county where but one newspaper is published or may be published.

Local laws. § 2. All laws of a local nature, which shall hereafter be passed by the legislature of this state, shall be published in like manner in each of the counties interested in the same.

Supervisors to designate printers. § 3. It shall be the duty of each board of supervisors in the several counties of this state, at their annual meeting, or at any special meeting called for the purpose, to appoint the printers for publishing the laws in their respective counties. The appointment shall be made in the following manner: The members of the board of supervisors representing, respectively, each of the two principal political parties into which the people of the county are divided, or a majority of the members of the board of supervisors representing, respectively, each of such political parties, shall designate, in writing, a paper fairly representing the political party to which they respectively belong, to publish the laws, and such designation shall be signed by the members making it, and filed with the clerk of the board of supervisors, and the two papers so designated shall publish the laws. In case the members of the board of supervisors representing either of the two principal political parties into which the people of the county are divided, or a majority of such members, cannot agree upon a paper, then, in that case, they shall make report to that effect to the clerk of the board of supervisors, and such board shall, by resolution, designate a paper fairly representing such political party to publish the laws. If there shall be but one paper published in the county, then, in that case, the laws shall be published in that paper. If either of the two principal parties into which the people of the county are divided shall have no representative among the members of the board of supervisors, then it shall be the duty of the board of supervisors, by resolution, to designate a paper fairly representing such political party, that is unrepresented in the board, to publish such laws, with the paper selected as hereinbefore provided. [*Thus amended by L. 1887, ch. 625, superseding L. 1886, ch. 515.*]

13 Abb. N. C., 421.

Duty of secretary of state. § 4. It shall be the duty of the secretary of state to transmit in the order in which they are passed, to each treasurer of the several counties of this state, copies of all laws of a general nature, and such as relate to the local affairs thereof, for publication in the manner provided for in this act. It shall be the duty of each treasurer to cause the same to be published in the papers designated for publishing them.

Money to be raised by tax. § 5. It shall be the duty of each board of supervisors, in the several counties of this state, in making out the assessment roll, to assess and levy on the taxable property of the county whose representative they are, such sums as shall be sufficient to defray the expenses of publishing the laws in the newspapers designated.

Compensation for publishing laws. § 6. The publisher of each of the papers so designated as aforesaid shall be entitled to receive for publication of the laws above specified a sum not exceeding fifty cents nor less than twenty cents, for each folio, except in counties having a city of fifty thousand inhabitants. In counties having a city of over fifty thousand inhabitants, by the last preceding census, the sum to be paid for such publication shall not be less than thirty cents or more than fifty cents for each folio. The specific rate per folio to be paid in each county shall be fixed by the board of supervisors thereof within the limits above specified. [*Thus amended by L. 1887, ch. 443.*]

L. 1847, Chap. 253 — An act concerning the enactment and promulgation of the statutes.

Certain bills to be deemed passed by "three-fifths." SECTION 1. Whenever by the terms of the constitution it is necessary that three-fifths of all the members elected to either house shall be present to constitute a quorum upon the final passage of a bill, such bill shall not be deemed to have passed unless so certified by the presiding officer of each house; and in the publication of every law in all cases where a bill is certified by the presiding officers as having been passed in the presence of three-fifths of all the members elected to each house, the secretary of state, after stating, in accordance with chapter three hundred and six of the laws of eighteen hundred and forty-two, as amended, when the bill became a law, shall add the words "passed, three-fifths being present." [*Thus amended by L. 1888, ch. 4.*]

Evidence of being so passed. § 2. The addition of the words "three-fifths being present" shall be presumptive evidence that the bill was certified by the presiding officers as having been passed in the presence of three-fifths of all the members elected to each house, and the absence of such words shall be presumptive evidence that the bill was not so certified by the presiding officers.

L. 1879, Chap. 212 — An act to provide for the distribution of the acts passed by the legislature to town clerks' offices.

[Repealed, L. 1882, ch. 283.]

L. 1847, Chap. 458 — An act in relation to the publication and distribution of the session laws of this state.

[Sections 1 and 2 are omitted as temporary.]

When and how session laws to be published in newspapers. § 3. All laws to be published in newspapers in pursuance of the act hereby amended¹ shall be published within four months after the final adjournment of the legislature in each year, and the whole of every law, which, in the ordinary type of the newspaper in which it shall be published, would not occupy more than two columns, shall be published in one edition of such paper; and when such law shall exceed two columns as aforesaid, the same shall be published as soon as by occupying the space of two such columns in a paper of the same kind, it may be done.

Names to be prefixed to each volume. § 4. There shall be prefixed to each volume of the session laws hereafter published, the names and residences of the governor, lieutenant-governor, senators and members of assembly, and presiding officers of both houses, in office at the time of the passage of the laws contained in such volumes. The constitution of this state shall be published with the laws of the present session.

¹ L. 1845, ch. 280, *ante*, p. 473.

L. 1885, Chap. 341 — An act to provide for the publication of the session laws from seventeen hundred and seventy-seven to eighteen hundred and one, inclusive.

Secretary of state to republish laws. SECTION 1. The secretary of state is directed to republish, verbatim, preserving the original spelling and punctuation, the session laws of this state from seventeen hundred and seventy-seven to eighteen hundred and one, both inclusive. References showing when each law was amended or repealed, may be added.

Material, style, etc. § 2. The republication shall be in octavo volumes of not less than six hundred nor more than seven hundred and fifty pages each, with an index to each volume, and of a material equal in style and quality to the session laws of eighteen hundred and eighty-four.

Number to be published and how distributed. § 3. The edition shall consist of one thousand copies and shall be distributed as follows: One copy to each judicial district library; one copy to the clerk's office of each county; one copy to each justice of the supreme court, and each judge of the court of appeals; one copy to each legislative library, and each state department; two hundred copies to the trustees of the state library, for literary and scientific exchanges. The remainder shall be delivered to the trustees of the state library, and such trustees shall reserve sufficient copies for the future use of the state, and in their discretion sell the balance at a price to be fixed by them, and pay the proceeds into the treasury of the state.

\$6,000 appropriated. § 4. Six thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated, to carry this act into effect, and the same shall be paid by the treasurer on the warrant of the comptroller in such sums and to such persons as the secretary of state shall approve. The work herein authorized shall not be begun unless it can be completed for the sum herein appropriated.

Statement on title page. § 5. The title page of each volume shall state that it was published pursuant to this act, and the same may be cited in any action or proceeding with the same force as the original edition.

L. 1888, Chap. 171 — An act to provide for the publication of the session laws of the colony of New York for the year seventeen hundred and seventy-four and seventeen hundred and seventy-five.

Secretary of state to republish laws of 1774 and 1775. SECTION 1. The secretary of state is directed to re-publish, verbatim, preserving the original spelling and punctuation, the session laws of the colony of New York, passed during the years seventeen hundred and seventy-four and seventeen hundred and seventy-five.

Style, etc. § 2. The re-publication shall be in one octavo volume, with an index, and of a material equal in size and quality to the session laws of eighteen hundred and eighty-seven.

Quantity; distribution. § 3. The edition shall consist of one thousand copies and shall be distributed as follows: Two copies to each judicial district library; one copy to the clerk's office of each county; one copy to each justice of the supreme court, and each judge of the court of appeals; two copies to each legislative library, and one to each state department; two hundred copies to the trustees of the state library, for literary and scientific exchanges, and one to each member of the legislature. The remainder shall be delivered to the trustees of the state library, and such trustees shall reserve sufficient copies for the future use of the state, and in their discretion sell the balance at a price to be fixed by them, and pay the proceeds into the treasury of the state.

Appropriation. § 4. The sum of seven hundred and fifty dollars or so much thereof as may be necessary, is hereby appropriated out of any money in the

treasury not otherwise appropriated, to carry this act into effect, and the same shall be paid by the treasurer, on the warrant of the comptroller, in such sums and to such persons as the secretary of state shall approve.

Title page; effect. § 5. The title page of the volume shall state that it was published pursuant to this act, and the same may be cited in any action or proceeding with the same force as the original edition.

L. 1888, Chap. 317 — An act to provide for the purchase and distribution of a chronological table of the statutes of the state.

Secretary of state to procure and furnish books. SECTION 1. The secretary of state is hereby authorized and required to purchase and furnish to the governor for the use of the executive chamber, the lieutenant-governor, the members of the senate and assembly, the justices of the supreme court and county judges, and the other bodies, officials and departments, excepting town clerks, who are now entitled by law to receive printed copies of the session laws, one set each, at such price as the secretary of state may deem reasonable not exceeding seven dollars per set, of "a table, chronologically arranged, of the statutes of the state of New York, amended, repealed, continued or otherwise modified or affected," prepared by Clarence F. Birdseye.

[Section 2 appropriates \$5,000.]

TITLE 5.

TITLE V.

Of the Mode of Taking Testimony in Certain Legislative Proceedings.

- Sec. 1. Chairmen of committees may administer oaths to witnesses.
 2. Chairman of certain committees may issue process for witnesses.
 3. Such chairman may also issue commissions to examine witnesses.
 4. When such commission may be issued during recess of legislature.
 5. How commissions to be directed; to be accompanied by interrogatories.
 6. Persons to whom such commission shall be directed, to take oath; they may issue process for witnesses.
 7. Unless otherwise directed witnesses to be examined in private.
 8. Witnesses to be examined on oath; their testimony to be reduced to writing.
 9. Depositions to be transmitted to chairman of the committee.
 10. Commission may be executed by one or more; may also be directed to one.
 11. The persons by whom the commission is executed, and also the witnesses examined, to be paid a reasonable compensation.
 12. Persons desirous to take testimony in regard to contested elections may apply to a judge or recorder, etc., for process.
 13. Such officer to issue a summons, directed to all such witnesses as shall be named.
 14. Summons, how served.
 15. Notification to adverse party, how to be issued.
 16. Notification, how to be served.
 17. Witnesses who shall attend, to be examined.
 18. Testimony to be reduced to writing, and to be transmitted to clerk of proper house.
 19. Witnesses to be entitled to same fees as in courts of record.
 20. Penalty of one hundred dollars on witnesses refusing or neglecting to attend as summoned.
 21. Fees of the officer for issuing summons and taking testimony.

Witnesses
before com-
mittees.
99 N.Y., 468.

SECTION 1. The chairman of any committee, either of the senate or assembly, or of any joint committee, shall be authorized to administer oaths to all witnesses coming before such committee for examination.

[L. 1814, p. 24.]

§ 2. Every chairman of a committee, which, by the terms of its appointment, shall be authorised to send for persons and papers, shall have power, under the direction of the committee, to issue compulsory process for the attendance of any witness within the state, whom the committee may wish to examine.

TITLE 5.
Process for
witnesses.

§ 3. Every such chairman shall also have power, under the direction of the committee, to issue a commission for the examination of any witness, who shall be without the jurisdiction of the state, or if within the state, shall be unable to attend, or who shall, for special reasons, be excused by the committee from attendance.

Commis-
sion to take
testimony.

§ 4. Whenever a committee shall obtain authority for that purpose, from the house or legislature by which it shall be appointed, it may issue such commission to be executed during the recess of the legislature.

Ib., during
recess.

§ 5. Every such commission shall be directed to such magistrates or other persons as the committee may designate; and interrogatories, framed by the committee, shall be annexed thereto.

[159]
How di-
rected, etc.

§ 6. The persons to whom such commissions shall be directed, if they reside within the state, and accept the trust, shall, before they enter on the execution of their duties, take the oath of office prescribed in the Constitution; and such commissioners shall have power to issue process to compel the attendance of the witnesses whom they shall be required to examine.

How exe-
cuted.

§ 7. Unless otherwise instructed by the committee, it shall in all cases be* the duty of the commissioners to examine in private every witness attending before them, and not to make public the particulars of such examination, until the same shall be made public by order of the house or legislature appointing the committee.

Ib., exami-
nation pri-
rate.

§ 8. Every witness so attending shall be examined on oath or affirmation, and his testimony shall be reduced to writing by the commissioners, and signed by the witness.

Witness to
be sworn.

§ 9. When the commission shall have been duly executed, the commissioners shall annex thereto the depositions of the witnesses, duly certified by them, and shall, without delay, transmit the same, enclosed and under seal, to the chairman of the committee by which the commission shall have been issued.

Deposi-
tions to be
transmit-
ted.

§ 10. Every such commission may be executed by any one or more of the persons to whom the same shall be directed, and may, in the discretion of the committee issuing the same, be directed to a single person.

Who may
execute
commis-
sion.

§ 11. The persons executing any such commission, and all persons examined as witnesses by commissioners, or by a committee of either house, or of the legislature, shall be paid out of the treasury a reasonable allowance for their services, expenses and attendance, to be fixed by the committee, and certified by the chairman thereof, and to be audited by the comptroller.

Compensa-
tion to com
missioners
and wit-
nesses.

§ 12. When any person shall intend to contest the election of any member of the senate or assembly, or to support any such election

Contested
elections.

*In the first edition of the R. S., this word is printed "by;" but not so, in the original, on file in the office of the secretary of state.

TITLE 5. so intended to be contested, and shall be desirous of obtaining testimony respecting any such election; he may make application to the first judge of a county, or to any judge of a county court of the degree of counsellor at law, or to the mayor or recorder of any city, for process to procure the attendance of the witnesses, whose testimony he may be desirous to obtain.

Summons
for wit-
nesses.

[160]

§ 13. The officer to whom such application shall be made, shall thereupon issue a summons, directed to all such witnesses as shall be named by such applicant, and requiring the attendance of such witnesses before him, at some convenient time and place, to be expressed in such summons, in order to be then and there examined touching such election.

How
served.

§ 14. Such summons shall be served, by delivering a copy thereof to each witness named therein, a reasonable time before the day on which the attendance of such witness is required.

Notifica-
tion to
other party

§ 15. Whenever any summons shall be issued as aforesaid, the officer issuing the same shall deliver to the applicant a notification, directed to the opposite party, and stating the object of such application, the name of the applicant, and the time and place fixed for the examination of the witnesses.

How
served.

§ 16. Such notification shall be served on the opposite party, by delivering to him, or leaving at his usual place of abode, a copy thereof, a reasonable time before the day fixed for the aforesaid examination; and such examination shall not be proceeded in, without proof of the due service of such notification.

Witnesses,
how ex-
amined.

§ 17. All witnesses who shall attend, pursuant to said summons, and all other witnesses who shall be produced at the time and place aforesaid, by either of the parties, shall then and there be examined, on oath or affirmation, before the officer who issued the summons, touching all such matters and things respecting the election about to be contested, as shall be proposed by either of the parties.

Deposi-
tions, how
transmit-
ted.

§ 18. The testimony given on such examination, shall be reduced to writing by the officer taking the same, and signed by the witnesses respectively; after which, such officer shall transmit the said testimony, duly certified under his hand, together with a copy of the summons and notification issued by him, and of the proof of the service of such notification, enclosed and under seal, to the clerk of the senate, or the house of assembly, as the case may require.

Witness's
fees.

§ 19. Every witness attending by virtue of any such summons, shall be entitled to the same fees as are allowed to witnesses in civil suits in courts of record, to be paid by the party at whose instance such witness was summoned.

[Section 20 repealed by L. 1886, ch. 598.]

Fees of
officer.

§ 21. The following fees shall be allowed to the officer issuing such summons and taking such examination:

For issuing the summons, twenty-five cents;

For the notification to the opposite party, twenty-five cents;

For administering an oath or affirmation, twelve and a half cents;

For reducing the testimony of each witness to writing, ten cents for each folio; and five cents for every copy thereof, for each folio;

For certifying the testimony and enclosing the same to the clerk of the senate or assembly, twenty-five cents. TITLE 6.
[101]

[See L. 1886, ch. 653, *post.*]

L. 1875, Chap. 557 — An act in relation to the expenses of contested seats in the legislature of this state.

Unsuccessful contestant to bear his own expenses. SECTION 1. Hereafter, whenever the seat of any member of either branch of the legislature of this state shall be contested by any person claiming the right to said seat, no expense incurred by the contestant, in prosecuting his claim to the same, shall be paid by the state, unless said contestant shall be awarded said seat.

L. 1854, Chap. 197 — An act to designate a state paper.

[Repealed by L. 1884, ch. 133, § 5, which follows next.]

L. 1884, Chap. 133 — An act in relation to the publication of legal and other notices and advertisements, and in relation to the state paper.

Advertisements in the state paper continued. SECTION 1. All legal and other notices and advertisements, hereinafter referred to, the publication whereof has been commenced in the state paper before this act, except section six, shall take effect, may be continued in the said state paper and shall be as valid as if this act had not been passed. But all such future legal and other notices and advertisements shall be published as herein provided.

Where advertisements to be published. § 2. Any and all notices and advertisements in any and all suits, actions, and special proceedings in any court, or before any judge of any court, of this state, now required or allowed to be published in the state paper, shall hereafter be published in such newspaper published in the county wherein the place of trial is designated, or wherein the papers in such special proceedings are required to be, or are, filed as shall be designated by such court or judge.

The same. § 3. All other notices or advertisements now required or allowed to be published in the state paper shall be published in a newspaper to be designated by the officer or officers, person or persons allowed or required to so publish, or a majority of them, in the county wherein such officers or persons, or any of them, shall have a principal place of business fixed by law; and if none such be so fixed, then in the county wherein they, or either of them, shall reside or have a place of business. If all be non-residents of the state, and have no place of business therein, then in any newspaper published in this state.

The same. § 4. If there be no newspaper published in the county wherein any such notice or advertisement is required or allowed to be published, or not a sufficient number for the requisite publications thereof, or the newspapers therein decline or refuse to publish the same at the rates allowed by law, the publication thereof may be made in such newspaper published elsewhere as may be designated by the court, judge, officer or person mentioned in sections two and three.

When act providing for state paper to be repealed. § 5. From and after the expiration of the contract with the publisher or publishers of the state paper, which was in force January first, eighteen hundred and eighty-four, the act entitled "An act to designate a state paper," passed April eleventh, eighteen hundred and fifty-four, and all other acts providing for the designation, appointment, creation or contracting with or for a state paper shall be and are repealed. Such repeal shall not revive any former act, or acts, law, or part thereof.

No new contract to be made. § 6. No contract with the publisher or publishers of any newspaper shall hereafter be made under the act entitled "An act to designate a state paper," passed April eleventh, eighteen hundred and fifty-four, or any other act or law now in existence, nor shall any state paper hereafter, or after January first, eighteen hundred and eighty-four, be appointed, designated, created or contracted for thereunder.

Proof of publication. § 7. Proof by affidavit of the publishers, printers, or foreman, or one of them, of the publication in the newspaper in which such notices and advertisements shall be published shall, within ten days after the last publication, be made and tendered to the attorney or attorneys, or other persons or person ordering, directing or interested in such publication; but delivery thereof shall not be compulsory in the case of private persons until payment of the charges for publication.

Inconsistent acts repealed. § 8. All acts and parts of acts inconsistent herewith are hereby repealed. Such repeal shall not revive any former act, or acts, law, or part thereof.

When this act takes effect. § 9. This act shall take effect at the expiration of the contract with and for the state paper in force January first, eighteen hundred and eighty-four, except section six, which shall take effect immediately.

L. 1885, Chap. 262 — An act to provide for the designation of a newspaper in the city of Albany for the publication of certain public notices.

Officers named to designate paper to publish terms of court, etc; rates. SECTION 1. The secretary of state, comptroller and treasurer shall, on or before the first day of January in each year, designate a daily newspaper, published in the city of Albany, in which shall hereafter be published during the year following such designation, all appointments of special terms, circuit courts, courts of oyer and terminer, general terms of the supreme court hereafter made, and the rules of practice hereafter adopted from time to time by the justices of the supreme court and the court of appeals; such publication to be made promptly after the announcement and adoption thereof; also promptly after their enactment the various laws of the state as filed in the office of the secretary of state; also all notices and advertisements required to be published in a newspaper by the attorney-general; also all notices and advertisements required to be published in a newspaper by the superintendent of the insurance department, and by the superintendent of the banking department; also all notices and advertisements required by law to be published in a newspaper in actions against foreign corporations. And the rates for such publications shall not exceed the legal rates now provided by law.

19 N. Y., 224.

Publication to be additional. § 2. Such notices and advertisements are not to be substituted for those now required to be published in other newspapers, but additional thereto.

[Supplementary Title.]

TITLE 8^B.*Of the Board of Claims; and its Powers and Duties.*

[Those provisions of the former statutes, relating to the canal appraisers, which appeared to the editor to be applicable to the board of claims, have been retained in ch. IX, tit. 9, art. 3, *post*, and the statutes, passed since the R. S., appended thereto. It was deemed impracticable, without great inconvenience and a violation of the plan of this work, to transfer them to this supplementary title.]

L. 1883, Chap. 205^A—An act to abolish the office of canal appraiser and the state board of audit, and to establish a board of claims and define its powers and duties.

Board of claims created; commissioners of claims, appointment of; term of office; compensation. SECTION 1. The governor, by and with the advice and consent of the senate, shall appoint three persons commissioners of claims who shall be citizens of this state, and of whom two, but not more, shall be practicing attorneys and counsellors of the supreme court; they shall constitute a board of claims. Said commissioners to be first appointed shall be appointed for the term of two, four and six years, respectively, from the first day of January next ensuing their appointment, and until their successors shall be appointed and have qualified, and shall enter upon the duties of their office on the first day of June, eighteen hundred and eighty-three. Two of said commissioners shall constitute a quorum for the transaction of business; the commissioner having the shortest time to serve and who is a counsellor of the supreme court shall act as presiding officer of the board. Whenever the term of office of any commissioner of claims shall expire, the governor in like manner shall appoint a successor for the full term of six years. When a vacancy in the office shall occur before the expiration of its term, the same shall be filled for the unexpired term by appointment by the governor, by and with the advice and consent of the senate, if the senate shall be in session, or if not in session, the governor may appoint some suitable person to fill such vacancy until the first day of January next succeeding such appointment, and the remainder of the unexpired term shall be filled in like manner as if such vacancy had occurred during the session of the senate. The governor may remove any commissioner of claims within the term for which he shall have been appointed, but before removing him he shall give to such officer a copy of the charges against him and an opportunity of being heard in his defense. Each of said commissioners shall take and subscribe the oath of office required by the constitution and file the same in the office of the secretary of state, and shall receive a compensation of five thousand dollars per annum, payable quarterly, and his necessary expenses, not exceeding five hundred dollars per annum for each commissioner. The persons appointed under this act to fill vacancies shall possess the same qualifications as the commissioner whose place such person is appointed to fill.

Clerk; stenographer; marshal; appointment, duties, salaries, etc. § 2. The board of commissioners shall appoint, and at pleasure may remove, a clerk, a stenographer, and a marshal who shall also act as and perform all the duties of a messenger, each of whom, before entering upon the duties of his office, shall take the oath of office required by the constitution, and file the same in the office of the secretary of state; they shall perform their duties under the direction of the board. The clerk, under the direction of the board, shall disburse the fund which from time to time may be appropriated for the use of said board, and before entering upon the duties of his office, he shall make and file in the office of the comptroller a bond for the faithful performance of his duties, in an amount and with sufficient sureties to be approved by the board, which approval shall be endorsed on said bond. The clerk shall receive an annual salary of three thousand dollars, in lieu of all fees except for copies of papers. The stenographer shall receive an annual salary of fifteen hundred dollars, and five cents a folio for copies of minutes and testimony

furnished at the request of the claimant; but no charge shall be made against the state by the clerk or stenographer for copies of minutes, testimony or papers furnished the attorney-general, or the board of commissioners, or filed in the office of the clerk. The stenographer shall file with the clerk a copy of the minutes and testimony taken in each claim heard by the board. The marshal shall receive for his services as such, and including his services and duties as messenger, the annual salary of eight hundred dollars; and the clerk, stenographer and marshal shall each receive actual expenses while in the discharge of their respective duties at other places than the city of Albany. Said salaries shall be paid monthly. [*Thus amended by L. 1888, ch. 365, superseding L. 1884, ch. 60.*]¹

Powers to administer oaths, regulate proceedings, take testimony, etc.; contempt; subpoenas; commissions; process generally; contingent fund; report thereon. § 3. Each of said commissioners and the clerk of said board shall have the power to administer oaths, and said board shall have authority to establish rules for its government; and the forms and methods of procedure before it; and in its discretion, and in furtherance of justice, to allow amendments to claims, and the filing of amended and supplemental claims, in like manner as amendments in pleadings and amended and supplemental pleadings are allowed to be made and filed in the supreme court; in its discretion, and upon sufficient cause shown, and in furtherance of justice, to open the hearing of claims and permit further proofs and testimony to be given therein; and to direct the rehearing of claims heard before it; to issue and direct the issue of subpoenas to witnesses to appear and testify, and for the production of books and papers; to compel obedience to such subpoenas by attachment, to punish for contempt in like cases and in like manner as the supreme court; to order and hold such special sessions at such times and places in the state as it may determine; to issue to the marshal of said board any process of said board in proceedings to compel obedience to subpoenas by attachment, and to punish for contempt; and said marshal shall execute all such process and have and possess all the power and authority in relation hereto now possessed by the sheriffs of the respective counties of this state in respect to process in proceedings to compel obedience to subpoenas and to punish for contempt issued by or from the supreme court, or any justice thereof; to issue commissions to take testimony within or without the state, to be used before it, in like cases and in like manner as the supreme court issues such commissions. When testimony is taken on commission, at the instance of the claimant, the fees of the commissioner before whom it is taken, and the expense of the commission shall be paid by the claimant; and when taken at the instance of the state, such commissioner's fees, together with all expense incurred by the attorney-general in his official capacity therein, and in the performance by him of any of the duties required to be performed by him by chapter two hundred and five of the laws of eighteen hundred and eighty-three and any amendments thereof, shall be paid by said board out of the contingent fund of said board annually appropriated for its use. Said board shall allow and pay out of its contingent fund for services rendered and performed in the preservation, care, custody, examination and search of the records documents, papers and maps of the late board of canal appraisers from the time of the abolishment of the office of canal appraiser until said records, documents, papers and maps were by law deposited in and made a part of the records of the office of the clerk of the said board of claims. On the first day of January in each year, the clerk shall report, under oath, to the comptroller, a detailed statement of his receipts, and of his disbursements made under the direction of the board, of its contingent fund, for the preceding year. [*Thus amended by L. 1888, ch. 365.*]

Sessions; duty of sheriff. § 4. The said board shall hold at least four sessions in each year in the city of Albany, commencing, respectively, on the second Tuesday of January, April, September and November, and shall continue each session so long as may be necessary for the disposition of business, and it may hold adjourned sessions at such other times and places in the state as the board may determine

¹ See L. 1884, ch. 384, *post*, p. 542.

necessary and proper. The sheriff of any county other than the county of Albany, on notice from said board, shall furnish suitable rooms in the court-house of his county for any session or adjourned session of said board, and shall in person or by deputy, if required by said board, attend said session or adjourned session, and his fees for attendance shall be paid out of the contingent fund of said board, at the same rate as for attending a term of the supreme court in said county. [*Thus amended by L. 1884, ch. 60.*]

Duty of attorney-general and superintendent of public works. § 5. The attorney-general, in person or by deputy, shall attend each session of said board on behalf of the state; shall prepare all cases on the part of the state for hearing, and argue the same when prepared; shall cause testimony to be taken when necessary to secure the interest of the state; shall prepare forms, file interrogatories and superintend the taking of testimony in the manner prescribed by said board; and generally shall render such services as may be necessary to further the interest of the state in all cases before said board, and in the court of appeals, on appeal from the final order and awards of said board. It shall not be necessary for the attorney-general, on the part of the state, to file with the board answers or other pleadings to claims, filed (except where a claim in favor of the state exists against a claimant or claimants in the nature of a counter-claim) but all allegations contained in said claims shall be deemed denied on the part of the state; in claims in which a special defense or defenses thereto is or are deemed, by the attorney-general, to exist on the part of the state, he may file an answer setting forth the nature of such defense. In all cases of claims before said board of which the canal appraisers have heretofore had jurisdiction, the superintendent of public works, on request from the attorney-general, shall furnish him such assistance as he may require to subpoena witnesses and prepare the cases for trial on the part of the state. [*Thus amended by L. 1888, ch. 365.*]

Record of proceedings; seal; evidence. § 6. Said board shall keep a record of its proceedings, and at the commencement of each session of the legislature, and at such other times during each session of the legislature as it may deem proper, or as the senate or assembly may request, report to the legislature the claims upon which it has finally acted, with the statement of the award made in each case. Said board shall have and use a seal, which shall conform as to the device thereon, and the size thereof, to the requirements contained in the provisions of chapter one hundred and ninety of the laws of eighteen hundred and eighty-two. The copy of any record, order, award or other paper certified by the clerk of said board, under the seal of said board, shall be entitled to be read in evidence, in any and all courts, and before any and all officers, with the same force and effect as papers certified under the seal of the supreme court, by a clerk thereof. Said seal shall be procured for said board by its clerk, and kept in the office of said clerk. [*Thus amended by L. 1884, ch. 60.*]

Jurisdiction. § 7. Said board shall have jurisdiction to hear, audit and determine all private claims against the state which shall have accrued within two years prior to the time when such claim is filed, except claims barred by any existing statute, and to allow thereon such sums as should be paid by the state. Such board, however, shall have jurisdiction of such claims as were formerly cognizable by the state board of audit,¹ provided that they shall be filed on or before July first, eighteen hundred and eighty-four, and shall not have accrued more than six years prior to such filing. It shall also have jurisdiction of all claims, on the part of the state, against any person making a claim against the state before said board, and shall determine such claim or demand, both on the part of the state and the claimant; and if it finds that the demand of the state exceeds the demand of the claimant, it shall award such excess in favor of the state against the claimant. [*Thus amended by L. 1884, ch. 60.*]

26 Hun, 581; 96 N. Y., 71; 99 N. Y., 101, 491; 105 N. Y., 229.

¹ By L. 1876, ch. 444, § 2, as amended by L. 1881, ch. 211, the state board of audit had power "to hear all private claims and accounts against the state, except such as are now heard by the canal appraisers, according to law."

Awards. § 8. On the termination of a hearing before the board of claims, the commissioners, or any two of them, shall make and assign¹ the award of the board, which shall contain the names of the persons interested, the names of the attorneys, if any, who appeared for the claimant, or by whom the claim was made, the amount allowed the claimant, if any, and if it be a case where the state seeks to appropriate or has appropriated lands for public use, a description by metes and bounds of the land appropriated and for which the award is made, and what amount, if any, the board has deducted from the claim for claims of the state against the claimant, or payments, an entry of which shall be made in detail by the clerk of said board in the book kept by him for that purpose, which entry shall be signed by the commissioners making such award.

26 Hun, 581; 89 N. Y., 52.

Books, entries to be made in, etc.; final award in favor of state to be conclusive. § 9. Books shall be kept in the office of the clerk of said board in which the orders and awards of said board shall be entered by the clerk of said board, and each of said awards shall be entered by him in detail; and he shall attach all the papers in any one claim, with a copy of the testimony and certified copies of all orders therein, to a certified copy of the final order or award, and file the same in his office. Any such final order or award in favor of the state shall be final and conclusive as between the state and the claimant, and the state may sue for and enforce collection of the same in any court having jurisdiction. The attorney-general shall take such proceedings as may be necessary to enforce any such order or award in favor of the state. [*Thus amended by L. 1884, ch. 60.*]

Appeals, when and how taken; proceedings thereon. § 10. When the amount in controversy exceeds five hundred dollars, either party feeling aggrieved by the final award or final order of the board may appeal to the court of appeals, upon questions of law only, arising upon the hearing of the claim or upon the excess or insufficiency of such award or order. The court of appeals shall hear such appeal, and affirm, reverse or modify such award or order, or dismiss such appeal, or award a new hearing before the board of claims, as justice may require. Every appeal shall be in writing, stating briefly the grounds upon which it is taken, and subscribed by the party or his attorney. A copy of such notice of appeal shall be served upon the clerk of the board and upon the attorney-general. When the appeal is taken by the state copies of such notice of appeal shall be served upon the clerk of the board and the claimant, or the attorney appearing for him. Service of notice of appeal shall be made in like manner as in supreme court. The appeal must be taken within thirty days after service of notice of the final award or order of the board. The party taking an appeal shall, at or before the time of serving the notice thereof, unless said board, or a commissioner thereof, shall extend the time, make and serve upon the attorney-general, or, if the appeal is taken by the state, upon the claimant or the attorney appearing for him on the hearing before the board, a case containing so much of the evidence given before the board as may be necessary to present the questions raised by the notice of appeal; the respondent may propose amendments, and one of the commissioners before whom the claim was heard shall settle the same and sign the case so settled. Such appeals brought after making up the annual calendar of the court of appeals, or too late to be placed upon said calendar, may, if the attorney-general of the state shall deem it to the best interests of the state be put upon the calendar at any time and brought on for a hearing as preferred causes upon a notice of fourteen days; and it shall be the duty of the clerk of the court of appeals to place such causes on the calendar for the day for which they shall be noticed, or upon which the cause shall be ordered by the court or stipulated by the parties to be heard. And in case no appeal is taken from the decision of said board, as provided in this act, the decision of the board shall be final. [*Thus amended by L. 1887, ch. 507, superseding L. 1884, ch. 60, § 6.*]

28 Hun, 328; 29 Hun, 159.

¹ So in the original.

Questions to be considered on appeal; practice; rules of evidence, etc., to be observed. § 11. On the hearing before the court of appeals, only such questions shall be considered by the court as are raised by the notice of appeal. And on all questions not raised by the notice of appeal it shall be presumed that sufficient evidence was given on the hearing to sustain the order or award. The practice upon the hearing of appeals in the court of appeals, from the final order or award of the board, shall conform, as near as may be, to the practice prevailing upon appeals from the courts of record of this state. Upon the hearing of all claims before the board, the rules of evidence now prevailing in the courts of record of this state shall be observed, and the practice upon such hearings of claims and taking appeals from the final order or award made therein shall conform, as near as may be, to the practice now prevailing in the supreme court of this state upon the trial of actions, and upon appeals; but in no such appeal shall the appellant be required to give a bond or undertaking. [*Thus amended by L. 1884, ch. 60.*]

Office of canal appraiser and state board of audit abolished. § 12. On and after the thirty-first day of May, eighteen hundred and eighty-three, the office of canal appraiser and the state board of audit are abolished. All claims against the state then pending before the canal appraisers or before the state board of audit shall be and hereby are transferred to the board of claims. Said canal appraisers and said state board of audit are hereby directed to transmit to the clerk of the board of claims all papers, documents and evidence, in cases before either of said bodies pending and undetermined on the thirty-first day of May, eighteen hundred and eighty-three.

Jurisdiction to hear canal claims. § 13. All the jurisdiction and power to hear and determine claims against the state, formerly possessed by the canal appraisers and the state board of audit, is hereby vested in the board of claims. Whenever a claim against the state is pending before said board of claims, which the canal appraisers have heretofore had jurisdiction to hear and determine, the board shall take testimony in the vicinity where the damages are alleged to have occurred, and the premises alleged to have been damaged shall be personally viewed by said board, and said board shall hold an adjourned session in said vicinity for the purpose of hearing said claim. [*Thus amended by L. 1884, ch. 60.*]

Rooms to be assigned in the new capitol. § 14. Suitable rooms shall be assigned in the new capitol for the sessions of the board of claims, and for the office of the clerk. Said commissioners and clerk shall have the use of the books in the state library in the course of their official duties. The legislature shall annually appropriate such sum as shall be necessary, not exceeding five thousand dollars, as a contingent fund for the use of said board.

Costs, etc., not to be taxed. § 15. Costs, witness fees and disbursements shall not be taxed, nor shall counsel or attorney fees be allowed by said board to any party.

Effect of this act limited. § 16. Nothing in said chapter two hundred and five of the laws of eighteen hundred and eighty-three, as amended by chapter sixty of the laws of eighteen hundred and eighty-four, shall be deemed to give jurisdiction to said board of claims to hear, audit and determine any private claim against the state, hereafter filed, for the liquidation of which an appropriation has been made, and the comptroller by law is required to audit, and which the claimant has presented for the audit of said comptroller. [*Thus amended by L. 1888, ch. 365.*]

L. 1884, Chap. 334 — An act authorizing the commissioners of the board of claims to appoint a deputy clerk, and for other purposes.

May appoint deputy clerk. SECTION 1. The commissioners of the board of claims are hereby authorized and empowered to appoint, and at pleasure to remove, a deputy clerk. Said deputy clerk shall receive an annual salary of fifteen hundred dollars, to be paid monthly.

Stenographer not to act as such. § 2. So much of section two of chapter two hundred and five of the laws of eighteen hundred and eighty-three, and so much of section two of chapter sixty of the laws of eighteen hundred and eighty-four, as directs that the stenographer appointed by said commissioners of the board of claims shall act as deputy clerk, is hereby repealed.

[Section 3, temporary.]

L. 1884, Chap. 85—An act conferring jurisdiction upon the board of claims to hear, audit and determine certain private claims against the state of New York.

Exclusive jurisdiction to hear certain private claims. SECTION 1. Exclusive jurisdiction is hereby conferred upon the board of claims to hear, audit and determine all private claims against the state of New York, arising in any manner from and out of any and all acts and proceedings had, done and performed under chapter 134 of the laws of 1878, and chapter 306 of the laws of 1879, entitled respectively "An act in relation to infectious and contagious diseases of animals," provided said claims shall not have accrued more than six years prior to the filing of said claims, and to allow thereon such sums as should be paid by the state; anything contained in the aforesaid acts to the contrary notwithstanding.

Appeals. § 2. When the amount in controversy in any such claim shall exceed five hundred dollars, either party feeling aggrieved by the final order or final award of said board may appeal therefrom to the court of appeals in like manner as is provided for appeals from the final order or final award of said board, by chapter 205 of the laws of 1883, entitled "An act to abolish the office of canal appraiser and state board of audit, and to establish a board of claims and define its powers and duties," and the acts amendatory thereof. And the court of appeals shall hear such appeals in like manner as appeals from the final order and award of said board in other claims heard by it, as is provided in the act last above mentioned, and the acts amendatory thereof.

L. 1884, Chap. 329—An act in relation to cases for damages appealed from the late board of canal appraisers to the canal board, and now pending and undetermined by said board.

Appeals transferred to board of claims. SECTION 1. All appeals from decisions of the canal appraisers now pending and unheard before the canal board and such appeals hereafter taken are hereby transferred to and directed to be heard and determined by the board of claims, and said board of claims upon hearing of such appeal shall have the same power as to the affirmance, reversal or modification of such decisions or the granting of new trials therein as is now possessed by the canal board, and in case a new trial shall be granted on any of said appeals the said board of claims shall proceed to hear, try and determine the same according to the provisions of chapter two hundred and five of the laws of eighteen hundred and eighty-three. Either party shall have the same right of appeal to the court of appeals from any determination thereon by said board of claims as is provided in either cases by said act chapter two hundred and five of the laws of eighteen hundred and eighty-three.

Attorney-general to prepare appeals for argument, etc. § 2. The attorney-general, in person or by deputy, shall prepare said appeals for argument on the part of the state, and argue the same when prepared; and shall render such service as shall be necessary to further the interest of the state in all cases transferred by the provisions of this act to the board of claims, and in all appeals taken therein to the court of appeals.

L. 1884, Chap. 336—An act in relation to the appraisal of canal claims against the state.

Taking private lands, waters, etc., superintendent of public works to give notice to owner; recording notice; fees therefor; effect as evidence. SECTION 1. In the construction or improvement, hereafter, of any canal or feeder, whereby the superintendent of public works, or other authorized agent of this state, shall appropriate private lands, streams or waters, the said superintendent of public works, or other authorized agent of the state shall serve upon the owner, owners or occupants of said lands, streams or waters, a written or printed notice of such appropriation, duly signed by him, which notice shall contain an apt and sufficient description of the lands, streams or waters so appropriated, and the several county clerks of the counties of this state, wherein any of the lands, streams or waters so appropriated are situated, are authorized and directed upon the application of the said superintendent of public works, or other authorized agent of the state, to record a duplicate of said notice, with the affidavit of service thereof on the owner or occupant, in the books or records in said clerk's office, used for recording deeds; and the record of any such notice and of such proof of service, or a copy thereof, certified by the clerks of said counties where said notice is recorded as aforesaid, may be read in evidence in any of the courts of this state, or in the board of claims of this state, with like effect as if the original notice was produced and the proof given of said service; and the said county clerks shall be paid for recording such notice not to exceed the sum of ten cents per folio for each and every folio of one hundred words, and said notice, when so served and recorded, with proof of service thereof as aforesaid, shall be conclusive evidence of the appropriation of said lands, streams and waters, and of the quantities and boundaries thereof. Any notice of appropriation with description as aforesaid with proof of service thereof on the owner or occupant heretofore recorded in any county clerk's office as aforesaid, since the twenty-second day of May, eighteen hundred and eighty-four, at the request of said superintendent of public works, may be read in evidence in the like manner, and shall have the same force and effect in like cases, as if recorded under the provisions of this act as hereby amended. [*Thus amended by L. 1888, ch. 118.*]

Board of claims to audit claims for damages. § 2. The board of claims shall have jurisdiction to hear, audit and determine the claim of the owner or owners of such lands, streams or waters and to allow thereon such sums as should be paid by the state, provided such claim shall be filed within two years after the service of said written or printed notice, as provided in section one of this act.

When allowance to be made for expense of abstracts of title. § 3. The said board of claims, whenever the appraised value of the premises appropriated shall be less than two hundred dollars, shall in their award make a reasonable allowance for the expense of procuring the abstract of title and certificate of search as to incumbrances, which the statutes require shall be furnished the comptroller before payment of any damages which may be awarded for the permanent appropriation of land or water.

Repeal. § 4. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

L. 1885, Chap. 135—An act in relation to the care and custody of the records, documents, maps and papers of the late board of canal appraisers; and to provide that copies thereof may be certified and read in evidence.

Records, etc., to remain with clerk of board of claims. SECTION 1. The records, documents, maps and papers of, and filed with the late board of canal appraisers, now in the office of the clerk of the board of claims, and in the particular care and keeping of said clerk, shall be and remain in said clerk's office, as part of the records, documents, maps and papers of said office, and in the care and keeping of said clerk.

Copies, etc., certified by clerk, to be evidence. § 2. The copy or copies of any of the aforesaid records, documents, maps and papers on file as aforesaid, certified by the clerk of the said board of claims, under the seal of said board, shall be entitled to be read in evidence in any and all courts, and before any and all boards and officers, with the like force and effect, as records, documents and papers, certified under the seal of the supreme court, by a clerk thereof, or by any of the public officers and boards of this state, pursuant to the provisions of the code of civil procedure.

L. 1885, Chap. 355 — An act to secure returns on appeals from awards made by the late board of canal appraisers.

Board of claims may cause an amended return to be made, etc. SECTION 1. Where it may appear, by affidavit or otherwise, in an appeal now pending from an award made by the late board of canal appraisers that the return is defective, the board of claims shall cause an amended return to be made, which shall form the record upon which such appeal shall be heard and decided. The board of claims, in furtherance of justice, may amend any claim in any return by adding or striking out the name of a person as a claimant, or by correcting a mistake in the name of a claimant, or a mistake in any other respect, or by inserting an allegation material to the claim, or in any other respect that said board in its judgment shall deem proper and necessary, or by conforming the claim to the facts proved where such amendment does not substantially change the claim. Where a return is so defective that the material facts upon which the board of canal appraisers acted cannot be ascertained therefrom, the board of claims shall order a new trial.

L. 1887, Chap. 36 — An act in relation to the records, books, papers, decisions and files of the late state board of audit, and the care and custody thereof, and to provide that copies thereof may be certified and read in evidence.

Certain records to be transferred to board of claims. SECTION 1. The secretary of state is hereby authorized to transfer and deliver to the board of claims of the state of New York, all of the records, books, papers, decisions and files of the late state board of audit, remaining on deposit or on file in the office of the secretary of state on the first day of June, eighteen hundred and eighty-three, and now so remaining on deposit or file in said office.

Board of claims to receive the same, etc. § 2. The said board of claims are hereby authorized, within sixty days after the passage of this act, to receive from the secretary of state all of the records, books, papers, decisions and files of the late state board of audit, referred to in the first section of this act, and to deposit and file the same in the office of the clerk of said board of claims in the capitol in the city of Albany. The presiding commissioner of said board or the clerk of said board is hereby authorized and required to execute and deliver to the secretary of state a receipt for all such records, books, papers, decisions and files of said late state board of audit, so as aforesaid delivered.

Future custody thereof. § 3. From and after the deposit and filing of such records, books, papers, decisions and files in the office of the said clerk of the board of claims, the same shall be kept and remain in the office of said clerk, and under his custody and care, as part of the records, books, documents and papers of his said office.

When evidence. § 4. The copy or copies of any of the aforesaid records, books, decisions, documents or papers, certified by the clerk of said board of claims, under the seal thereof, shall be entitled to be read in evidence in any and all courts, and before any and all boards and officers of this state, with the like force and effect

as records, documents and papers certified under the seal of the supreme court by a clerk thereof, or by any of the public officers, boards or departments of this state, pursuant to statute, or the provisions of the code of civil procedure.

[Section 5, temporary.]

TITLE XI.

TITLE 11.

[281]

Of the Interest of the State in Mines.

- SEC. 1. What mines belong to the state in right of sovereignty.
2. Other mines belonging to the state.
3. What mines belong to the owner of the soil.
4. Discoverers of gold and silver mines, to have benefit thereof for twenty-one years.
5. Notice to be given to the secretary of state by such discoverer.
6. Such discoverer to be preferred in subsequent contracts for the working of the mines.
7. Limitation of the provisions of this title.

SECTION 1. The following mines are, and shall be, the property of the people of this state, in their right of sovereignty: Interest of state as sovereign.

1. All mines of gold and silver discovered, or hereafter to be discovered, within this state.

TITLE 11.

2. All mines of other metals discovered, or hereafter to be discovered, upon any lands owned by persons not being citizens of any of the United States.

3. All mines of other metals discovered, or hereafter to be discovered, upon lands owned by a citizen of any of the United States, the ore of which, upon an average, shall contain less than two equal third parts in value, of copper, tin, iron and lead, or any of those metals.

[1 R. L., 124, §§ 1 and 5; 293, § 5.]

As owner.

§ 2. All mines, and all minerals and fossils discovered, or hereafter to be discovered, upon any lands belonging to the people of this state, are and shall be the property of the people, subject to the provisions hereinafter made to encourage the discovery thereof.

[L. 1827, 239, § 4.]

Private property.

§ 3. All mines of whatever description, other than mines of gold and silver, discovered or hereafter to be discovered, upon any lands owned by a citizen of any of the United States, the ore of which, upon an average, shall contain two equal third parts or more, in value, of copper, tin, iron and lead, or any of those metals, shall belong to the owner of such land.

[1 R. L., 125, § 5.]

Bounty to discoverers.

§ 4. Every person who shall make a discovery of any mine of gold or silver, within this state, and the executors, administrators or assigns of such person, shall be exempted from paying to the people of this state, any part of the ore, produce or profit of such mine, for the term of twenty-one years, to be computed from the time of giving notice of such discovery, in the manner hereinafter directed.

[1 R. L., 125, § 1.]

Notice to be given.

§ 5. No person discovering a mine of gold or silver within this state, shall work the same, until he give notice thereof, by information in writing, to the secretary of this state, describing particularly therein, the nature and situation of the mine. Such notice shall be registered in a book, to be kept by the secretary for that purpose.

[1 R. L., 125, § 2.]

[289]
Privilege of discoverers.

§ 6. After the expiration of the term above specified, the discoverer of the mine, or his representatives, shall be preferred, in any contract, for the working of such mine, made with the legislature, or under its authority.

[1 R. L., 125, §§ 3 and 4.]

Qualifications.

§ 7. Nothing contained in this title shall affect any grants heretofore made by the legislature, to persons having discovered mines; nor be construed to give any person a right to enter on, or break up, the lands of any other person, or of the people of this state, or to work any mine in such lands, unless the consent, in writing, of the owner thereof, or of the commissioners of the land-office, when the lands belong to the people of this state, shall be previously obtained.

[1 R. L., 125, § 4.]

L. 1867, Chap. 943 — An act in relation to the working of mines reserved to the state, and to the use and occupation of lands for such purpose.

Power to enter upon lands for purpose of working mines. SECTION 1. In all cases in which a person or persons shall have discovered a mine or mines, and become entitled to work the same pursuant to title eleven, chapter nine, part first of the Revised Statutes, and such person or persons shall form a corporation pursuant to chapter forty of the laws of eighteen hundred and forty-eight, and the several acts subsequent thereto and amendatory thereof, if the consent in writing to enter upon and break up the lands of any person in or upon whose lands said mine or mines are found shall be refused, or cannot be obtained by agreement, or by reason of the infancy or the absence of such person from the state, or other legal disability of the owners of such lands, the said corporation so formed may enter upon and break up the lands of such person for the purpose of working such mine or mines in the manner hereinafter provided, and the right and easement so to do shall be deemed granted for public use, and for the public purpose of obtaining minerals reserved to the state; and the said right and easement are hereby granted to the corporation so formed, on their filing with the commissioners of the land-office a full description of the location of such lands and obtaining a grant thereof from said commissioners, who are hereby authorized to make such grant and file the terms thereof.

Filing of petition and appointment of commissioners to fix damages. § 2. The said company entitled to work such mines may file a petition in the supreme court of the state, setting forth the facts upon which they claim such right and the reasons which prevent their entering upon the land necessary for their mining operations; and upon such petition the court may appoint three disinterested persons as commissioners to examine into the matter, ascertain and fix the damages aforesaid, and report to the court. Notice of the filing of such petition shall be published in one of the papers printed in the county, or in each of the counties where the mine or mines are situated, and in the state paper, and a copy of such notice shall be served personally upon the owners of the land, or, if they are infants, upon their guardians, or if lunatics or under any other legal disability, on the committee having charge of them and their property. And the publication of such notice in the state paper shall be deemed a sufficient notice to such owners as are residents in other states or in other countries, or are temporarily absent from the state, provided that when the actual residence of such absentees is known or can be ascertained, a copy of such notice and petition shall be sent them by mail. All the parties interested shall be entitled to a hearing before such commissioners, at such time or times as said commissioners shall appoint. The report of the commissioners shall state:

1. The existence of the mine or mines proposed to be worked.
2. The names of the parties owning the land in which the mine or mines are situated, and the owners of the adjacent lands, so far as they are affected by the application, and the nature and value of their interest in the same individually. A map of such lands, from actual survey by metes and bounds, shall accompany the report.
3. An estimate of the damages to such owners from the contemplated use and occupation of their lands.
4. Such other information as the court may direct.

Report of commissioners, etc.; order denying or granting petition. § 3. The report of the commissioners shall be made within a reasonable time, to be fixed by the court. An order shall be made, in the discretion of the court, either denying the petition or granting it, and determining the quantity of land necessary for working the mine or mines, the damages to property by taking possession thereof, and the annual rent or the compensation to be paid to the owner, lessee or occupant thereof so long as the use and occupation shall continue. And thereupon the company in whose favor the order shall be made, upon payment of the damages,

and upon entering into an agreement, to be approved by the court, to pay the annual rent or the compensation and damages thus determined, shall have the right to enter upon and occupy and use the land set apart by such order, so long as they or their assignees shall work the said mine or mines and shall pay the said annual rent or compensation.

Guardians for infants. § 4. If the parties owning the land are infants or otherwise incompetent to act, the court shall appoint guardians to take care of their interests, and shall direct how any damages assessed, or compensation or rents to become due, shall be paid and invested for their benefit.

TITLE 12.

TITLE XII.

Of Escheats.

[283] [This entire title was repealed by L. 1880, ch. 245, being superseded by §§ 1977-1981, of the Code of Civil Procedure. The following statute remains still, it is believed, in force.]

L. 1831, Chap. 116 — An act respecting escheated lands.

Lands held under written contract. SECTION 1. Where lands have been or shall be escheated to the people of this state, and the person last seized was a citizen, or capable of taking and holding real estate, the commissioners of the land-office shall fulfil any contracts which may have been made by the person so seized, or by any person from whom his title is derived, in respect to the sale of any such lands, so far only as to convey the right and title of this state, pursuant to such contracts, without any covenants of warranty or otherwise, and shall allow all payments which may have been made on such contracts.

2 Hill, 74; 66 Barb., 374.

Under verbal agreements. § 2. If any part of such escheated land shall have been occupied under a verbal agreement for the purchase thereof as aforesaid, and the occupants shall have made valuable improvements thereon, the same shall be deemed as valid and effectual within the provisions of this act, as if such agreement had been in writing.

Payments. § 3. In cases where the commissioners of the land-office shall be satisfied that the payments still due on any such contract, exceed the value of the land exclusive of improvements made by the purchaser, and in cases where tenants have occupied any part of such escheated lands, by the permission of the person last seized, or of any person from whom his title is derived, with a view to the purchase thereof, the said commissioners shall cause such land to be appraised, and shall sell the same to the person who may have made such contract, or to the tenant who shall have so occupied any part of such land, their representatives or assigns, for the appraised value of such land, exclusive of improvements, upon such person or tenant complying with the provisions of this act.

Application when to be made. § 4. Application for the benefits of the provisions of this act, shall be made by the persons entitled thereto, within one year after the land in respect to which such application shall be made, shall have been reported by the attorney-general, to the commissioners of the land-office, as having been recovered.

First payments. § 5. When the amount due on any contract shall have been ascertained, and when the appraised value of any land shall have been obtained as herein provided, the applicants for the benefit of this act, shall, within such time as the commissioners of the land-office shall direct, pay into the treasury of this state, twenty-five per cent of the amount due on any such contract, or of the appraised value of such land, as the case may be, and execute their penal obligations respectively, for the payment of the residue of such amount, or of such appraised value, to the people of this state, in six equal annual payments, with interest at the rate of six per cent.

Surveyor-general to give certificate of sale. § 6. On such payment being made, and such obligation being delivered to the surveyor-general, he shall give to such purchaser a certificate similar to that required to be given by the third article of title fifth of the ninth chapter and first part of the Revised Statutes, to purchasers of unappropriated lands; which certificate shall confer on such purchaser, his representatives and assigns, the rights in the said article specified, subject to the limitations and conditions therein mentioned, in respect to the sale of unappropriated lands.

66 Barb., 374.

Agents. § 7. The commissioners of the land-office may employ an agent to explore any lands supposed to be escheated, and to collect evidence in relation to such escheat; and the expenses incurred therein shall be paid out of the avails of escheated lands, upon being audited by the commissioners; but such expenses shall not exceed the sum of five hundred dollars in any one year; and any expenses already incurred in the employment of such agent, in relation to lands escheated by the death of John G. Leake, not exceeding three hundred dollars, shall be paid in like manner.

Costs. § 8. In case where lands escheated have been or shall be recovered in suits against tenants in possession of such lands, who would be entitled to the benefits of the provisions of this act, and such tenants shall not have contested the recovery by this state, they shall not be liable to pay the costs of such suits; but the costs and charges of the attorney-general therein, and also his costs and charges in conducting proceedings for the recovery of lands escheated against unknown owners or claimants, where such lands shall be actually recovered, for the payment of which no provision is made by law, shall be paid out of the avails of escheated lands, on the warrant of the comptroller.

L. 1834, Chap. 37 — An act to amend the act concerning escheats.

[The act referred to in § 1 of this act was repealed by L. 1845, ch. 115, § 14; and it would seem that the repeal necessarily repealed this act by implication; but the editor has inserted this act, leaving its effect and applicability to be determined by other authority.]

Commissioners of land-office may grant without naturalization. SECTION 1. The commissioners of the land-office may grant releases under the fifteenth section of the act entitled "An act concerning escheats," passed April 29, 1833, in all cases where the alien through whom the title has passed was a resident of the United States, although the alien may not have filed such deposition or taken such incipient measures as are mentioned in the twelfth section of said act.

3 N. Y., 299.

Amount to be paid. § 2. Upon the execution of any release under the foregoing section, the commissioners shall require payment or security, pursuant to the directions of said act, of a sum not less than one-fortieth part of the ascertained value of the lands released; subject, however, to the provisions of the nineteenth section of said act.

Debts may be deducted. § 3. In ascertaining the amount to be paid or secured on granting releases, under the first section of the act hereby amended, the commissioners may deduct from the ascertained value of the land the debts which, under the fifth section of the act, would be a charge on the grantee of the lands released.

TITLE 13.

TITLE XIII.

Of the Recovery of Forfeited Estates.

[384]

[This title was repealed by L. 1880, ch. 245, having been superseded by §§ 1977-1982 of the Code of Civil Procedure.]

[Supplementary Title.]

TITLE 1^A.*Of Keepers of Hotels, Inns, Taverns and Boarding-houses.***L. 1855, Chap. 421.—An act to regulate the liability of hotel-keepers.**

Safe for money, etc. SECTION 1. Whenever the proprietor or proprietors of any hotel or inn shall provide a safe in the office of such hotel, or other convenient place, for the safe keeping of any money, jewels or ornaments belonging to the guests of such hotel or inn, and shall notify the guests thereof, by posting a notice (stating the fact that such safe is provided, in which such money, jewels or ornaments may be deposited) in a public and conspicuous place and manner in the office and public room, and in the public parlors of such hotel; and, if such guests shall neglect to deliver such money, jewels or ornaments to the person apparently in charge of such office for deposit in such safe, the proprietor or proprietors of such hotel shall not be liable for any loss of such money, jewels or ornaments, sustained by such guests, by theft or otherwise. [*Thus amended by L. 1883, ch. 227.*]

21 N. Y., 112; 33 N. Y., 571, 577; 44 Barb., 31; 36 Barb., 75; 65 Barb., 274; 46 N. Y., 269; 44 N. Y., 172; 43 N. Y., 589; 6 Robt., 365; 64 N. Y., 262; 1 Jones & Sp., 271; 94 N. Y., 1.

Liability for loss of clothing limited. § 2. No hotel-keeper shall be liable to any guest for the loss of wearing apparel, goods or merchandise for any sum exceeding the sum of five hundred dollars, where it shall appear that such loss occurred without the fault or negligence of such hotel-keeper; nor shall he be liable in any sum for the loss of any article or articles of wearing apparel, cane, umbrella, satchel, valise, box, bag, bundle or other chattel belonging to such guest, and not within a room assigned to him, unless the same shall be specially intrusted to the care and custody of such hotel-keeper or his servants. [*Thus amended by L. 1883, ch. 227.*]

L. 1860, Chap. 446—An act for the protection of boarding-house keepers.

Liens of boarding-house keepers. SECTION 1. The keeper of a boarding-house shall have the same lien upon and right to detain the baggage and effects of any boarder to the same extent and in the same manner as innkeepers have such lien and right of detention; but nothing herein shall be deemed to give to any boarding-house keeper any lien upon or right to detain any property the title to which shall not be in such boarder. [*Thus amended by L. 1876, ch. 319.*]

42 Barb., 626; 24 How. Pr. R., 63; 1 Lans., 484; 6 Robt., 268; 2 T. & C., 650; 7 Hun, 594; 9 Daly, 361.

L. 1866, Chap. 658—An act to limit the liability of innkeepers.

Loss by fire. SECTION 1. No innkeeper shall be liable for the loss or destruction by fire of property received by him from a guest, stored or being with the knowledge of such a guest in a barn or other out-building, where it shall appear that such loss or destruction was the work of an incendiary, and occurred without the fault or negligence of such innkeeper.

64 N. Y., 597; 61 N. Y., 34.

Value of animals. § 2. No animal belonging to a guest and destroyed by fire while on the premises of any innkeeper, shall be deemed of greater value than three hundred dollars, unless an agreement shall be proved between such guest and innkeeper that a higher estimate shall be made of the same.

L. 1879, Chap. 530—An act for the better protection of hotel-keepers, innkeepers, lodging-house keepers and boarding-house keepers.

Sale of goods and baggage of guest to satisfy lien. SECTION 1. Any hotel-keeper, innkeeper, boarding-house or lodging-house keeper, who shall have a lien for fare, accommodation, or board, upon any goods, baggage, or other chattel property and in his possession for a period of three months at least after the departure of the guest or boarder leaving the same, or who for a period of six months shall have in custody any unclaimed trunk, box, valise, package, parcel, or other chattel property whatever, may proceed to sell the same at public auction; and out of the proceeds of such sale may, in case of lien, retain the amount thereof and the expense of advertisement and sale; and, in case of unclaimed property, the expense of storage, advertisement, and sale thereof; provided, in all instances, the notice specified in the next section be first given as therein directed.

17 W. D., 422; 12 Daly, 174.

Notice of sale; hour of sale. § 2. Fifteen days at least prior to the time of the sale, a notice of the time and place of holding the sale, and containing a brief description of the goods, baggage, and articles to be sold, shall be published in a newspaper of general circulation, published in the city or town in which such hotel, inn, or boarding-house is situated; but if there be none, then in such newspaper published nearest said city or town; and shall also be served upon said guest, boarder or owner of such chattel articles and property, if he reside or can be found within the county where said hotel, inn, boarding-house, or lodging-house is situated, by delivering the same to him personally, or leaving it at his place of residence with a person of suitable age in charge thereof. But if such guest, boarder, or owner does not reside or cannot be found in said county, then said notice shall be deposited in the post-office of said city or town, with the postage prepaid thereon, fifteen days prior to said sale, and addressed to said guest, boarder, or owner at his place of residence, if he left his address, or it be otherwise known to said hotel, inn, boarding-house keeper, or lodging-house keeper. The sale shall take place between the hours of ten o'clock in the forenoon and four o'clock in the afternoon, and all articles sold shall be to the highest bidder for cash.

Refunding surplus. § 3. Such hotel-keeper, inn-keeper, boarding-house keeper or lodging-house keeper shall make an entry of the articles sold, and the balance of the proceeds of the sale, if any, and within ten days from such sale shall, upon demand, refund such balance and surplus to such guest, boarder, or person leaving the articles sold.

When surplus to be paid to county treasurer; affidavit. § 4. In case such balance shall not be demanded and paid as specified in the last section, within said ten days, then within five days thereafter said hotel-keeper, inn-keeper, boarding-house keeper, or lodging-house keeper shall pay said balance to the treasurer of the county, or chamberlain of said city, as the case may be, and shall at the same time file with said treasurer or chamberlain an affidavit made by him, in which shall be stated the name and place of residence, as far as they are known to him, of the guest, boarder, or person, whose goods, baggage, or chattel articles were sold, the articles sold, and the price at which they were sold, the name and residence of the auctioneer making the sale, and a copy of the notice published, and how served, whether by personal service, or by mailing, and if not so served the reason thereof.

Duty of county treasurer. § 5. Said treasurer or chamberlain shall keep said surplus moneys for and credit the same to the persons named in said affidavit as said guest, boarder, or person leaving the articles sold, and shall pay the same to said person, his or her executors or administrators, upon demand, and evidence satisfactory to said treasurer or chamberlain furnished of their identity.

Remedy not exclusive. § 6. Nothing herein contained shall preclude any other remedy now existing for the enforcement of hotel-keepers, inn-keepers, boarding-house keepers, or lodging-house keepers' lien, nor bar their right to recover for so much of the debt as shall not be paid through said sale.

L. 1887, Chap. 720—An act to provide fire escapes in hotels.

Hotel keepers required to provide fire escapes and to post notices. SECTION 1. Every owner, lessee, proprietor or manager of a hotel situated in the state of New York, exceeding two stories in height, shall on or before the first day of July, eighteen hundred and eighty-seven, place or cause to be placed a rope or other better appliance to be used as a fire escape in every room of said hotel used as a lodging room except the rooms on the ground floor, which rope or other better appliance shall be securely fastened at one end of it to a suitable iron hook or eye to be securely driven or secured into one of the joists or timbers next adjoining the frame of the window or one of the windows of said room, which rope shall be at all times kept coiled up and exposed to the plain view of any occupant of said room, the coil to be fastened in such slight manner as to be easily and quickly loosened and uncoiled, and such rope shall not be less than three-fourths inch in diameter and of sufficient length to reach from such window to the ground. Such rope, iron hook or eye and fastenings shall be of sufficient strength to sustain a weight of four hundred pounds. It shall, also, be the duty of every such owner, lessee, proprietor or manager to post or cause to be posted in a conspicuous place in each room and in each hall of such hotel, except the rooms and hall on the ground floor, a printed notice to the effect that a rope is so placed in every such room of said hotel, except the rooms on the ground floor, for use in case of fire, and giving full directions for such use.

10 Daly, 387.

Duty of chief engineer; penalty for obstructing him. § 2. It shall be the duty of the chief engineer, or the officer performing the duties of a chief engineer of a fire department, of every city and village of this state in the months of July and January of each and every year to inspect or cause to be inspected by some person to be deputized by him for that purpose, every room of every hotel in the city or village in which he is performing the duties of such chief engineer and ascertain if the provisions of section one of this act are complied with. And any owner, lessee, proprietor, manager or other person, who shall obstruct or prevent such officer or person from making a free inspection of said rooms provided for as aforesaid shall be liable to a penalty of fifty dollars for each and every offense to be recovered by a civil suit brought in the name of the people in any court of the state. It shall be the duty of every such person making such inspection on or before the fifteenth days of August and February of each and every year, to make and file a written report with the mayor, president or other officer performing the du-

ties of the chief executive of such city or village, showing what hotels he has so inspected, and specifying which of them have fully complied with the provisions of this act, and which, if any, have not, and in what respects and to what extent. Such mayor, president or other chief executive officer shall thereupon and within ten days after such report is so rendered to him, shall make and present to any court or magistrate having jurisdiction of crimes of the grade of a misdemeanor and procure a warrant for the arrest of every person so reported as violating the provisions of this act.

Penalty for violation of this act. § 3. Any officer or person violating any of the provisions of this act is guilty of a misdemeanor and is punishable by imprisonment in a penitentiary or county jail for not more than one year or by a fine of not more than one thousand dollars or by both.

Application of act qualified. § 4. This act shall not apply to fire-proof hotels.

[Supplementary Title.]

TITLE 1st.

Of Keepers of Livery Stables and other Bailles of Horses.

L. 1872, Chap. 498—An act for the protection of livery stable keepers and other persons keeping horses at livery or pasture.

Keepers may detain animals until charges for boarding or pasturage are paid, and maintain an action to enforce such lien. SECTION 1. It shall be lawful for all persons keeping any animals at livery or pasture, or boarding the same for hire, under any agreement with the owner thereof, to detain such animals until all charges under such agreement for the care, keep, pasture or board of such animals shall have been paid; provided, however, that notice in writing shall first be given to such owner in person, or at his last known place of residence, of the amount of such charges and the intention to detain such animal or animals until such charges shall be paid; and such persons may at any time maintain an action in any of the courts of this state to enforce such lien and procure a sale of the said animals for the payment of said keeping, pasture and board, and the costs of such action, whenever such sum shall exceed fifty dollars. [*Thus amended by L. 1880, ch. 145.*]

3 How. Pr., N. S., 73, 364; 16 J. & S., 107; 9 Daly, 214; 96 N. Y., 538; 90 Hun, 231; 13 Daly, 473.

When lien to be effective. § 2. From the time of giving such notice and while such horse or horses are so detained and no longer, such livery-stable keeper or other person shall have a lien upon such horse or horses for the purpose of satisfying any execution which may be issued upon a judgment obtained for such charges.

TITLE III.

Of the general Powers, Privileges and Liabilities of Corporations.

- SEC. 1. Powers of corporations.
2. To vest in every corporation hereafter created.
 3. Corporations not to possess any additional powers, except those given by charter.
 4. No corporation to exercise banking powers, unless expressly authorised.
 5. When the stockholders may be required to pay in the balance on their stock.
 6. A majority of the body authorised to act for a corporation, may do business.
 7. If corporation do not commence business in a year, powers to cease.
 8. Every charter hereafter granted, subject to alteration by legislature.
 9. Who to settle affairs of corporation upon its dissolution.
 10. Powers and liabilities of persons so acting.

SECTION 1. Every corporation, as such, has power,

1. To have succession by its corporate name, for the period limited in its charter; and when no period is limited perpetually:

2. To sue and be sued, complain and defend, in any court of law or equity:

3. To make and use a common seal, and alter the same at pleasure:

4. To hold, purchase, and convey such real and personal estate, as the purposes of the corporation shall require, not exceeding the amount limited in its charter:

5. To appoint such subordinate officers and agents, as the business of the corporation shall require, and to allow them a suitable compensation:

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

§ 2. The powers enumerated in the preceding section, shall vest in every corporation that shall hereafter be created, although they may not be specified in its charter or in the act under which it shall be incorporated.

§ 3. In addition to the powers enumerated in the first section of this title, and to those expressly given in its charter, or in the act under which it is or shall be incorporated, no corporation shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated and given.

187; 5 Barb., 613; 7 N. Y., 328; 12 Abb. Pr. R., N. S., 480; 2 Robt., 600; 12 Abb. N. C., 229; 20 J. & Hun, 272; 45 Hun, 334.

§ 4. No corporation created, or to be created, and not expressly incorporated for banking purposes, shall by any implication or construction, be deemed to possess the power of discounting bills, notes, or other evidences of debt, of receiving deposits, of buying gold and silver, bullion, or foreign coins, of buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt, upon loan, or for circulation as money.

§ 5. Where the whole capital of a corporation shall not have been paid in, and the capital paid, shall be insufficient to satisfy the claims of its creditors, each stockholder shall be bound to pay on each share held by him, the sum necessary to complete the amount of such share, as fixed by the charter of the company, or such propor-

General powers.

20 N. Y., 506; 12 N. Y., 127; 9 N. Y., 69; 7 N. Y., 471; 2 N. Y., 160; 1 N. Y., 509; 17 Barb., 316, 404; 2 Barb., 107; 1 Barb., 590; 4 Denio, 209, 480; 2 Denio, 112; 1 Sandf. Ch., 280; 7 [600] Abb. Pr. R., 139; 5 Hill, 187; 49 How. Pr. R., 91; 50 N. Y., 96; 38 Hun, 494; 88 N. Y., 410.

In what corporations to vest. 5 Denio, 577; 2 Cow., 661.

What other powers to be possessed. 15 N. Y., 54; 6 N. Y., 96; 3 N. Y., 439; 2 Wend., 392; 5 Hill, 8., 106; 32

Exercise of banking powers prohibited. 7 N. Y., 367; 17 Barb., 316; Hill & Denio, 202; 9 Wend., 392; 41 Hun, 145; 32 Hun, 272; 96 N. Y., 13. Liability of stockholders. 4 Barb., 333; 3 N. Y., 422; 28 Hun, 339.

TITLE 3.

Quorum.
30 Hun,
209; 30
Hun, 502

tion of that sum as shall be required to satisfy the debts of the company.

§ 6. When the corporate powers of any corporation are directed by its charter to be exercised by any particular body, or number of persons, a majority of such body, or persons, if it be not otherwise provided in the charter, shall be a sufficient number to form a board for the transaction of business; and every decision of a majority of the persons duly assembled as a board, shall be valid as a corporate act.

Forfeiture
for non-
user.
3 Barb.
Ch., 237; 30
Barb., 26;
44 Barb.,
631.

§ 7. If any corporation hereafter created by the legislature, shall not organize and commence the transaction of its business within one year from the date of its incorporation, its corporate powers shall cease.

[See, as to railroads, L. 1846, ch. 155.]

Reserva-
tion of
power to
repeal, &c.
5 Hill, 233;
14 Barb., 539;

§ 8. The charter of every corporation, that shall hereafter be granted by the legislature, shall be subject to alteration, suspension and repeal, in the discretion of the legislature.

Trustees in
case of dis-
solution.
31 Barb.,
411, 615; 30
Barb., 587;
[601]
7 Johns.
Ch. R., 128;
10 Wend.,
454; 5
Denio, 574;
46 Barb.,
363; 42
Barb., 174;
50 N. Y.,
302, 305.

§ 9. Upon the dissolution of any corporation created or to be created, and unless other persons shall be appointed by the legislature, or by some court of competent authority, the directors or managers of the affairs of such corporation at the time of its dissolution, by whatever name they may be known in law, shall be the trustees of the creditors and stockholders of the corporation dissolved, and shall have full power to settle the affairs of the corporation, collect and pay the outstanding debts, and divide among the stockholders the monies and other property that shall remain, after the payment of debts and necessary expenses.

[1 R. L., 248, § 1.]

Their
powers.
31 Barb.,
445; 50 N.
Y., 303; 1
Robt., 405.

§ 10. The persons so constituted trustees, shall have authority to sue for and recover, the debts and property of the dissolved corporation, by the name of the trustees of such corporation, describing it by its corporate name, and shall be jointly and severally responsible to the creditors and stockholders of such corporation, to the extent of its property and effects that shall come into their hands.

[1 R. L., 249, § 2.]

L. 1881, Chap. 22—An act requiring all certificates of incorporations, hereafter filed pursuant to law, either in the office of the secretary of state, or in the office of any county clerk, to be recorded therein and regulating the fees therefor.

All certificates of incorporation to be recorded; fees. SECTION 1. All certificates of incorporations hereafter incorporated under any of the laws of this state, required by law to be filed in the office of the secretary of state, or in the office of any county clerk, shall be duly recorded in the office where the same shall be filed, in books specially provided therefor, which books of record shall be properly indexed. The same fees shall be charged for the recording of such certificates as are now provided by law for the recording of deeds. And the secretary of state and such county clerk shall neither file nor record any such certificate in their office unless the fees therefor are first duly paid.

[As to the fees of the secretary of state, see L. 1882, ch. 156, *ante*, p. 562.]

L. 1882, Chap. 290—An act in relation to sales and purchases of lands by corporations.

Lands which may be taken and held by corporations. SECTION 1. Any corporation which shall have sold and conveyed any part of its real estate, may, notwithstanding any restriction in its charter, purchase, take and hold, from time to time, any lands adjacent to those already held by it; provided the supreme court shall authorize such purchase, taking and holding upon the application of such corporation, and on being satisfied that the value of all lands proposed to be so purchased shall not exceed that of lands sold and conveyed by the said corporation within the three years next preceding such application.

L. 1888, Chap. 306—An act for the relief of corporations whose certificates of incorporation were destroyed by the burning of the City Hall in the city of Albany.

Application for leave to file a certified copy of certificate. SECTION 1. Any corporation whose certificate of incorporation had prior to the tenth day of February, eighteen hundred and eighty, been filed in the office of the clerk of the county of Albany, a duplicate of which certificate had also prior to said date been filed in the office of the secretary of state may apply by petition to the supreme court at any special term held in said county, upon such notice to such persons as the said court shall direct for an order authorizing the filing in the office of the said clerk of a certified copy of such certificate to replace the original so destroyed.

When court may grant leave. § 2. If upon such application it shall appear to the satisfaction of the supreme court that such certificate of incorporation was, in compliance with the provisions of the act under which such corporation claims to be organized, filed in the office of the said clerk of the said county prior to the said tenth day of February, eighteen hundred and eighty, and that the same cannot now be found on file or on record in the said office, and that it is probable that the said certificate perished in the fire which destroyed the City Hall in the city of Albany, wherein said office was then located, on the tenth day of February, eighteen hundred and eighty, and it shall also appear that a duplicate of the said certificate was, in compliance with such incorporating act duly filed, and at the time of such application remains on file in the office of the secretary of state, the said court may by order direct that a copy of the said duplicate on file in the office of the secretary of state, duly certified by the said secretary of state, may within a time fixed by said order be filed in the office of the said clerk of the county of Albany as of the date when the original certificate appears to have been filed in the said office.

Effect of filing. § 3. When the certified copy of such duplicate certificate is filed as directed by the said order in the office of the said clerk it shall have in all respects the same force and effect as the said original certificate of incorporation and as if filed upon the date specified in the said order.

Pending suits excluded. § 4. Nothing in this act shall affect any pending action or proceeding.

Provisions relating generally to the Officers of Corporations.

L. 1885, Chap. 489—An act to protect stockholders of corporations from the wrong-doings of directors in certain cases.

When directors fail to adopt by-laws for annual election, acts, etc., of directors holding over void. SECTION 1. Whenever the directors named in the articles of association of any corporation organized under any general law of this state neglect or refuse

during the first year of the corporate existence to adopt the by-law required by law to enable stockholders to hold the annual election for directors, and where by such neglect the said directors hold over and continue to be directors after the expiration of the first year of the corporate existence, all acts and proceedings of the directors when so holding over, done for and in the name of the company, designed to charge upon the company any liability or obligation for the past services of any director so holding over, or for the past services of any officer, or attorney, or counsel appointed by them, and such liability or obligation shall be considered fraudulent and void.

Cases in which any stockholder may apply for stay of proceedings in action, etc. § 2. When directors of any such association or corporation are so holding over by their wrongful neglect of duty beyond the term for which they were appointed or elected, and an action has been brought against the company by the procurement of any of them to enforce any claim or obligation declared void by the preceding section, and such action is in the interest or for the benefit of any director or directors so holding over, and the company has by their connivance made default in such action, or consented to the validity of the claim or obligation so sought to be enforced against the company, any stockholder of the company may apply to the supreme court by affidavit, setting forth the facts, for a stay of the proceedings in such action, and on proof of the facts in such further manner and upon such notice as the court may direct, the supreme court may stay such proceedings or set aside and vacate the same or grant such other relief as to the court may seem proper, and which will not injuriously affect an innocent party, who without notice of such wrong-doings and for a valuable consideration has acquired rights under such proceedings.

When and how stockholders may elect directors, if directors have failed to provide therefor. § 3. When the directors of any association or corporation shall neglect or have neglected to adopt a by-law providing for the annual election of directors for sixty days after the first year of the corporate existence, the stockholders thereof may elect directors in the place of the directors holding over in the manner following: Stockholders entitled to vote for directors of such association or corporation as prescribed by section eight, chapter eighteen, title four, part first of the Revised Statutes, may meet after previous notice in writing given by them to all the stockholders, at least fifteen days before such meeting, of the time and place when and where such meeting will be held, for the purpose of electing directors; and it shall be the duty of any officer or other person having charge of the book or books of the association or corporation containing the names of the stockholders, to allow the same to be examined by any stockholder aforesaid, or his attorney, for the purpose of giving such notice. The place of such meeting shall be the principal office of such company, or in case it has no such office, at the place in this state where its principal business has been transacted, or if access to such office or place is denied, then at some other place to be designated in such notice in the city, town or village where the principal office of such company is or was last located. At such meeting such stockholders shall elect two or more inspectors of election. If at such meeting a majority of the votes cast on stock entitled to be voted on for directors, as prescribed by said section eight, chapter eighteen, title four, part one of the Revised Statutes, shall be voted upon and cast for one ticket for directors, the persons so named and voted for as directors shall thereupon be the directors of such association or corporation until the next annual election and until others are elected and qualified in their stead and without reference to the time when they became stockholders. In the absence at such meeting of the books of the association or corporation, showing who were and are stockholders of the association or corporation, each stockholder, in order to be entitled to vote at such election, shall make or present a statement in writing to be signed and verified by him under oath before a notary public or other person authorized to administer oaths, setting forth the number of shares of the stock of such company standing in his name on its books and upon which he is entitled to vote as prescribed by the section of the Revised Statutes hereinbefore referred to,

and which is then owned by him and standing on the books of the company in his name, and if known to him he shall also state the whole number of shares of stock issued by said association or corporation at the time when the election ought to have been held, and on filing such affidavit or verified statement with the inspectors, he shall be entitled to vote on such stock so appearing to be owned by him and standing on the books of the company in his name. The inspectors shall return and file such verified statements, together with a certificate of the results of the election, which shall be verified by them, with the clerk of the county in which such election is held, and thereupon the persons so elected shall be the directors of such association or corporation as aforesaid.

Stockholders may adopt by-laws at such meeting. § 4. The stockholders aforesaid at the meeting authorized by the preceding section, in addition to electing directors, as aforesaid, may adopt a by-law providing for the future annual meetings and election of directors, such by-laws shall be adopted in the same manner and by the same number of votes as is above prescribed for the election of directors, and shall have the same effect as if such by-law had been adopted by the directors of the company.

L. 1884, Chap. 223—An act to regulate the rights and duties of officers and directors of railroad corporations.

Prohibited from selling stock not then actually owned. SECTION 1. No officer or director of any railroad corporation shall sell or agree to sell, or be directly or indirectly interested in the sale or agreement to sell, any shares of the stock of the corporation of which he is such officer or director, unless, at the time of the sale or agreement to sell, he is the actual owner of such shares.

Penalty. § 2. Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment not less than six months, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

TITLE IV.*

TITLE 5.

Special Provisions relating to certain Corporations.

- Sec. 1. Certain books of incorporated companies to be kept open, for certain time.
2. Certain prohibitions and restrictions upon directors of corporations, officers, etc.
3. Debts of corporations not to exceed certain amount; penalty for excess.
4. Certain transfers of property prohibited; corporations dissolved in certain cases.
5. Supreme court to correct illegal elections; proceedings for that purpose.
6. By-laws regulating elections; evidence of right to vote.
7. Oath to be taken by inspectors of elections.
8. On failure to hold elections of directors, new day to be appointed; proceedings.
9. Penalty on corporations, etc., for purchasing their notes, etc., at less sum than that due thereon.
10. Officers, etc., of corporations not to loan upon notes offered to them officially for discount.
11. Extent and application of the provisions of this title.

* This title inserted pursuant to the "act concerning the Revised Statutes," passed December 10, 1888, § 15.

TITLE 4.

Certain books to be open at certain times.
 5 N. Y. 506;
 10 Barb., 217; 19 Wend., 45;
 3 Wend., 588; 50 Barb., 282.

SECTION 1. The book or books of any incorporated company in this state, in which the transfer of stock in any such company shall be registered, and the books containing the names of the stockholders in any such company shall, at all reasonable times during the usual hours of transacting business, be open to the examination of every stockholder of such company, for thirty days previous to any election of directors; and if any officer having charge of such books, shall, upon demand by any stockholder as aforesaid, refuse or neglect to exhibit such books, or submit them to examination as aforesaid, he shall for every such offence, forfeit the sum of two hundred and fifty dollars, the one moiety thereof to the use of the people of this state, and the other moiety to him who will sue for the same, to be recovered by action of debt in any court of record, together with the costs of such suit.

[L. 1825, 448, § 1.]

Dividends from surplus profits only.
 8 Wend., 645; 10 Barb., 280;
 16 J. & S., 349, 355;
 17 J. & S., 149; 23 N. Y., 162, 428;
 25 N. Y., 93.

Capital not to be reduced.

[602]

Notes for instalments on stock not to be discounted.

Nor notes to withdraw instalments paid.

Liability of directors for violating these provisions.

Extent of liability.

Not barred by statute of limitations.

Proviso.

Amount of debts.

§ 2. It shall not be lawful for the directors or managers of any incorporated company in this state to make dividends, excepting from the surplus profits arising from the business of such corporation; and it shall not be lawful for the directors of any such company to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of such company, or to reduce the said capital stock, without the consent of the legislature; and it shall not be lawful for the directors of such company to discount or receive any note, or other evidence of debt, in payment of any instalment actually called in and required to be paid, or any part thereof, due or to become due on any stock in the said company; nor shall it be lawful for such directors to receive or discount any note, or other evidence of debt, with the intent of enabling any stockholder in such company to withdraw any part of the money paid in by him on his stock; and in case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the said directors at the time, or were not present when the same did happen, shall in their individual and private capacities, jointly and severally be liable to the said corporation, and to the creditors thereof in the event of its dissolution, to the full amount of the capital stock of the said company so divided, withdrawn, paid out, or reduced, and to the full amount of the notes or other evidences of debt so taken or discounted in payment of any stock, and to the full amount of any notes or evidences of debt so discounted with the intent aforesaid, with legal interest on the said respective sums, from the time such liability accrued; and no statute of limitations shall be a bar to any suit at law or in equity, against such directors for any sums for which they are made liable by this section: *Provided*, That this section shall not be construed to prevent a division and distribution of the capital stock of such company which shall remain after the payment of all its debts, upon the dissolution of such company, or the expiration of its charter.

[L. 1825, 448, § 2.]

§ 3. The total amount of the debts which any incorporated com-

pany shall at any time owe, whether for deposits, or by bond, bill, note, or other contract, over and above the actual deposits with the said company, shall not at any time exceed three times the amount of the capital stock actually paid in; and in case of any excess the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the said directors at the time, and except those who were not present when the same did happen, shall in their individual and private capacities, jointly and severally, be liable for such excess to the said corporation, and in the event of its dissolution, to any of the creditors thereof, to the full amount of such excess, with legal interest from the time such liability accrued; and no statute of limitations shall be a bar to any suit at law or in equity, against such directors for any sums of money for which they are made liable by this section.

TITLE 4.

Liability of directors for excess.

Not barred by statute of limitations.
4 Barb., 388.

[L. 1825, 448, § 3.]

§ 4. Whenever any incorporated company shall have refused the payment of any of its notes, or other evidences of debt, in specie, or lawful money of the United States, it shall not be lawful for such company, or any of its officers, to assign or transfer any of the property or choses in action of such company, to any officer or stockholder of such company, directly or indirectly, for the payment of any debt; and it shall not be lawful to make any transfer or assignment in contemplation of the insolvency of such company, to any person or persons whatever; and every such transfer and assignment to such officer, stockholder or other person, or in trust for them or their benefit, shall be utterly void.

[603]

Certain transfers of property prohibited.
8 Barb., 121;
11 Barb., 265; 21 N. Y., 406; 30 Barb., 646;
15 Barb., 66;
5 Hill, 221;
34 N. Y., 96;
48 N. Y., 271;
44 Barb., 631; 36 Barb., 261;
18 Abb. Pr. R., 423; 8 Bosw., 199;
59 N. Y., 5;
5 Hun, 123;
16 J. & S., 46; 4 Dem., 484; 31 Hun, 329;
88 N. Y., 680; 90 N. Y., 607, 618;
94 N. Y., 364.

[L. 1825, 450, § 6. The remainder of the original section of the R. S. repealed by L. 1880, ch. 245.]

This section was repealed by L. 1882, ch. 402, as included in the general banking act, L. 1882, ch. 409, § 187, *ante*, p. 1555. But the repealing act of 1882 was amended by L. 1884, ch. 434, so as to restore this section.

Powers of supreme court respecting elections.
19 Wend., 139; 11 Paige, 194;
36 How. Pr. R., 112; 12 Abb. Pr. R., N. S., 394;
91 N. Y., 1.

§ 5. It shall be the duty of the supreme court, upon the application of any person or persons or body corporate, that may be aggrieved by, or may complain of, any election, or any proceeding, act or matter, in or touching the same (reasonable notice having been given to the adverse party, or to those who are not to be affected thereby, of such intended application), to proceed forthwith and in a summary way, to hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matters or causes of complaint, and thereupon to establish the election so complained of, or to order a new election, or make such order and give such relief in the premises, as right and justice may appear to the said supreme court to require: *Provided*, That the said supreme court may, if the case shall appear to require it, either order an issue or issues to be made up in such manner and form as the supreme court may direct, in order to try the respective rights of the parties who may claim the same, to the office or offices or franchise in question; or may give leave to exhibit, or direct the attorney-general to exhibit, one or more information or informations in the nature of a *quo warranto* in the premises.

Proceedings.

[L. 1825, 451, § 9, amended pursuant to the "act concerning the Revised Statutes" passed December 10, 1828, § 15.]

TITLE 4.

Certain by-laws to be published
Evidence of right to vote
5 N. Y., 566;
19 Wend.,
(604)
45, 139; 11
Abb. Pr.
R., N. S.,
16; 12 Abb.
Pr. R., N.
S., 398; 40
Hun, 174.

§ 6. No by-law of the directors and managers of any incorporated company, regulating the election of directors or officers of such company, shall be valid, unless the same shall have been published for at least two weeks in some newspaper in the county where such election shall be held, at least thirty days before such election; and in all cases where the right of voting upon any share or shares of the stock of any incorporated company of this state, shall be questioned, it shall be the duty of the inspectors of the elections, to require the transfer books of said company, as evidence of stock held in the said company; and all such shares as may appear standing thereon in the name of any person or persons, shall be voted on by such person or persons, directly by themselves, or by proxy, subject to the provisions of the act of incorporation.

[L. 1825, 451, § 11.]

Oath of inspectors of elections.
19 Wend.,
185, 636.

§ 7. The inspectors who may be appointed to conduct any election of directors or any other officer of any incorporated company of this state, shall be required, before entering on the duties of their appointment, to take or subscribe the following oath or affirmation: "I, A. B., do solemnly swear, [or affirm, as the case may be,] that I will execute the duties of an inspector for the election now to be held, with strict impartiality, and according to the best of my ability."

[L. 1825, 451, § 12.]

On failure of election, another day to be appointed.
Who entitled to vote on such subsequent day.
11 N. Y.,
152; 4
Palge, 247;
62 Barb.,
408; 11
Abb. Pr.
R., N. S.,
18; 29 N. Y.,
348, 353.

§ 8. If at any time hereafter, the election for directors of any bank or other incorporated company of this state, shall not be duly held on the day designated and appointed by the act incorporating such bank or other incorporated company, it shall be the duty of the president and directors of such bank or other incorporated company, to notify and cause an election for directors to be held within sixty days immediately thereafter; and in all cases, no share or shares shall be voted upon, except by such person or persons who may have appeared on the transfer books of said company to have had the right to vote thereon, on the day when, by the act of incorporation of such company, the election ought to have been held; which said right so to vote shall be exercised by the persons so appearing as aforesaid upon the transfer books of such company, on any day when such election may be held.

[L. 1825, 451, § 13.]

Corporation and its officers, &c., not to purchase its notes at a discount.
Penalty.
48 N. Y.,
430

§ 9. It shall not be lawful in any company incorporated for banking purposes, its officers, agents or servants, or any of them, directly or indirectly to purchase or be interested in the purchase of any promissory note, or other evidence of debt, issued by any such company, at a less sum than appears by the face thereof to be due and payable; and any person offending against the provisions of this section, shall forfeit and pay three times the nominal amount of the note or other evidence of debt so purchased, to be recovered, with costs of suit, by any person who will sue for the same, in any court of competent jurisdiction.

[L. 1825, 451, § 15.]

Officers, &c., of

§ 10. It shall not be lawful for any person being president, director,

cashier, clerk, agent, or any way interested or concerned in the management of the concerns of any such company, to discount, or directly or indirectly make any loan upon any note, bill, or other evidence of debt, which shall have been offered to such directors for discount; and every note, bill, or other evidence of debt so discounted, or upon which any loan shall have been made by any of the persons aforesaid, knowing that such note had been so offered and refused, shall be utterly void; and the person offending herein, knowing that such note had been so offered and refused, by making any discount or loan, shall, for every such offence, forfeit and pay to any person who will sue for the same, twice the amount of any such discount or loan, to be recovered by action of debt, with costs of suit, in any court of competent jurisdiction.

[L. 1825, 452, § 16.]

§ 11. The provisions of this title shall not apply to any religious society, nor to any moneyed corporation, which shall have been or shall be created, or whose charter shall be renewed or extended after the first day of January, one thousand eight hundred and twenty-eight, and which shall be subject to the provisions of the second title of this chapter. [*Thus amended by L. 1871, ch. 883.*]

[See the 18th subdivision of § 15, of the "act concerning the Revised Statutes," passed December 10, 1828; L. 1829, ch. 94; L. 1838, ch. 260; L. 1840, ch. 363; L. 1841, ch. 319; 56; L. 1839, ch. 355.]

TITLE 4.

corporations not to loan upon certain notes.

Notes, &c., void.

(605)

Further penalty.

1 N. Y., 86;
48 N. Y.,
430; 1
Robt., 405.

Applica-
tion of this
title lim-
ited.
5 Hill, 321.

L. 1838, Chap. 161—An act to procure useful information as to the public works of this state.

Drawings, plans and specifications to be filed. SECTION 1. Every railroad, canal and bridge company incorporated by this state, shall cause to be deposited with the comptroller, in the canal room, accurate drawings of the plans and specifications of the mechanical work hereafter to be constructed by such company, to be drawn on a scale and on paper to be designated by the board of canal commissioners, or by such other board of public works as may hereafter be organized by the legislature.

1 Robt., 405.

Map and profile. § 2. Every such company shall cause to be deposited in like manner, a map and profile of every canal, railroad or bridge hereafter to be constructed by them, drawn on a scale and on paper of a size and in a form to be in like manner designated.

1 Robt., 405.

L. 1842, Chap. 165—An act to compel transfer agents of foreign corporations to exhibit a list of the stockholders thereof.

Duty of agents. SECTION 1. The transfer agent in this state of any moneyed or other corporation existing beyond the jurisdiction of this state, (whether such agent shall be a corporation or a natural person) shall at all reasonable times during the usual hours of transacting business, exhibit to any stockholder of such foreign corporation, when required by him, the transfer book of such foreign corporation, and also a list of the stockholders thereof (if in their power so to do).

18 J. & S., 165, 456; 19 Abb. N. C., 1; 44 Hun, 552.

Penalty. § 2. In case such transfer agent or any clerk or officer of such agent should refuse to exhibit such transfer book, or a list of the stockholders of such

foreign corporations as aforesaid, he shall for every such offense forfeit the sum of two hundred and fifty dollars, to be recovered by the person to whom such refusal was made.

L. 1850, Chap. 172 — An act to prohibit corporations from interposing the defence of usury in any action.

Defence of usury not to be interposed. SECTION 1. No corporation shall hereafter interpose the defence of usury in any action.

17 N. Y., 52; 15 N. Y., 85; 17 Barb., 309.

Definition of term corporation. § 2. The term corporation, as used in this act, shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships.

23 N. Y., 276; 80 Barb., 627; 28 Barb., 188; 17 Barb., 311; 35 N. Y., 65; 33 N. Y., 665.

L. 1870, Chap. 135 — An act for the relief of corporations organized under general laws.

Filing of amended certificates; how deemed and taken. SECTION 1. The directors of any corporation, organized under any general act for the formation of companies, in whose original certificate of incorporation any informality may exist, by reason of an omission of any matter required to be therein stated, are hereby authorized to make and file an amended certificate or certificates of incorporation, to conform to the general act under which said corporation may be organized; and, upon the making and filing of such amended certificate, the said corporation shall, for all purposes, be deemed and taken to be a corporation from the time of filing such original certificate.

25 Hun, 556; 88 N. Y., 279.

Proviso. § 2. Nothing in this act contained shall in any manner affect any suit or proceeding, at the time of filing such amended certificate pending against said corporation, or impair any rights already accrued.

L. 1870, Chap. 322 — An act to authorize corporations to change their names.

Corporations may apply to supreme court. SECTION 1. Any incorporation, incorporated company, society or association organized under the laws of this state, excepting banks, banking associations, trust companies, life, health, accident, marine and fire insurance companies, may apply at any special term of the supreme court sitting in the county in which shall be situated its chief business office, for an order to authorize it to assume another corporate name. [*Thus amended by L. 1876, ch. 280.*]

Petition, and notice of application. § 2. Such application shall be by petition, which shall set forth the grounds of the application, and shall be verified by the chief officer of the corporation. Notice of such application shall be published for six weeks in the state paper and in a newspaper of every county in which such corporation shall have a business office, or, if it have no business office, of the county in which its principal corporate property is situated, such newspaper to be one of those designated to publish the session laws; and it must appear to the satisfaction of the court that such notice has been so published, and that the application is made in pursuance of a resolution of the directors, trustees or other managers of the corporation applying.

Power of court to order a change of name. § 3. If the court to which such application is made shall be satisfied, by such petition so verified, or by other evidence,

that there is no reasonable objection to such corporation changing its name, it may make an order authorizing it to assume the proposed new corporate name. A copy of said order shall be filed in the office of secretary of state, and with the county clerk of every county in which said corporation has a business office, or, if it have no business office, of the county in which its principal corporate property is situated, and be published at least once in each week for four weeks in some newspaper in every county where such corporation has a business office, or if it have no business office in the county in which its principal corporate property is situated, such newspaper to be designated by the court.

Change of name when to take effect. § 4. When the requirements of this act shall have been complied with, the corporation applying for a change of name, may, from and after the day specified in the order of the court, be known by and use the new corporate name designated in the order of the court.

Change not to affect pending suits, rights or liabilities. § 5. No suit or legal proceeding commenced by or in behalf of or against any corporation shall abate by reason of a change of its corporate name, made as herein authorized. Such change of the corporate name of the said corporation or company shall in no way affect the rights or liabilities of said corporation or company. All obligations of said company or corporation may be enforced against said corporation or company in the changed name, and all actions and proceedings commenced and pending against said corporation or company at the time said corporate name is changed shall be continued in the name in which said action or proceedings were commenced, or the court may, on the application of either party, allow the action or proceeding to be continued in the corporate name to which said corporation or company has been changed.

L. 1872, Chap. 146—An act to authorize corporations to hold and convey real estate, for business purposes, in other states, with the consent thereof.

Corporations may hold real estate and stocks in other states. SECTION 1. It shall be lawful for any corporation organized under the laws of this state and transacting business in it and other states, or foreign countries, except savings banks, to acquire, hold and convey in such states or foreign countries, with the consent thereof, such real estate as shall be requisite for such corporation, in the convenient transaction of its business, and to invest its funds in the stocks, bonds or securities of other corporations owning lands situated in this state or such states, provided that loans shall not be made on any stocks upon which dividends shall not have been declared continuously for three years, immediately before such loans are made; and provided further such stocks shall be continuously of a market value twenty per cent greater than the amount loaned or continued thereon. [Thus amended by L. 1883, ch. 361, § 1.]

[L. 1883, ch. 361, § 2. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.]

L. 1872, Chap. 611—An act in relation to the capital stock of corporations.

Capital stock, how increased; amount limited. SECTION 1. An incorporation, incorporated company, society or association formed under the laws of this state, excepting banks, banking associations, trust companies, life, health, accident, marine and fire insurance companies, railroad and navigation and gas companies, may increase its capital stock, as provided by section twentieth of "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight; provided that this act shall not apply to corporations created by special act of incorporation, the capital stock of which originally exceeded two hundred

thousand dollars, and that such increase shall not exceed in the aggregate the amount of capital stock specified in the said act of incorporation, and any such corporation the capital of which shall be increased under the provisions of this act, and the stockholders thereof shall be subject to all the liabilities as regards such additional capital as is provided in the original act or charter in relation to its capital.

95 N. Y., 93.

L. 1873, Chap. 151—An act for the relief of stockholders of corporations whose certificates of stock have been lost or destroyed.

Stockholders may compel corporators to issue duplicate certificates in case of loss. SECTION 1. Whenever any company incorporated under the laws of this state shall have refused to issue a new certificate of stock in place of one theretofore issued by it, but which is alleged to have been lost or destroyed, the owner of such lost or destroyed certificate, or his legal representatives, may apply to the supreme court, at any special term thereof appointed to be held in the judicial district where such owner resides, for an order requiring such corporation to show cause why it should not be required to issue a new certificate of stock in place of the one so lost or destroyed. Such application shall be by petition, duly verified by the owner, in which shall be stated the name of the corporation, the number and date of the certificate, if known, or can be ascertained by the petitioner, the number of shares of stock named therein and to whom issued, and as particular a statement of the circumstances attending such loss or destruction as such petitioner shall be able to give. Upon the presentation of said petition, said court shall make an order requiring said corporation to show cause, at a time and place therein mentioned, why it should not be required to issue a new certificate of stock in place of the one described in said petition. A copy of said petition and of said order shall be served upon the president or other head of such corporation, or on the cashier, secretary or treasurer thereof, personally, at least ten days before the time designated in said order for showing cause.

46 Hun, 223.

Court to proceed summarily; to order that duplicate certificates be issued; petitioner to give security; obedience to order, how enforced. § 2. At the time and place specified in said order, and on proof of due service thereof, the said court shall proceed in a summary manner and in such mode as it may deem advisable to inquire into the truth of the facts stated in said petition, and shall hear such proofs and allegations as may be offered by or in behalf of the petitioner, or by or in behalf of said corporation or other party, relative to the subject-matter of said inquiry, and if, upon such inquiry, said court shall be satisfied that such petitioner is the lawful owner of the number of shares of the capital stock, or any part thereof, described in said petition, and that the certificate therefor has been lost or destroyed, and cannot after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued in place thereof, it shall make an order requiring said corporation or other party, within such time as shall be therein designated, to issue and deliver to such petitioner a new certificate for the number of shares of the capital stock of said corporation which shall be specified in said order as owned by said petitioner, and the certificate for which shall have been lost or destroyed. In making such order the court shall direct that said petitioner deposit such security, or file such a bond in such form and with such sureties as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter appear to be the lawful owner of such certificate stated to be lost or stolen; and the court may also direct the publication of such notice, either preceding or succeeding the making of such final order, as it shall deem proper. Any person or persons who shall thereafter claim any rights under said certificate so alleged to have been lost or destroyed, shall have recourse to said indemnity, and the said corporation shall be discharged of and from all liability to such

person or persons by reason of compliance with the order aforesaid; and obedience to said order may be enforced by said court by attachments against the officer or officers of such corporation, on proof of his or their refusal to comply with the same.

46 Hm, 223.

L. 1873, Chap. 469—An act relative to the purchasers of the franchises and property of corporations, whose franchises and property shall have been sold by mortgage.

When purchasers of franchises, sold under mortgage, may become a body corporate. SECTION 1. Whenever the franchises, privileges, easements, rights and liberties of any corporation, created by any act of the legislature of this state, or formed and incorporated under or by virtue of any general act thereof, and empowered by said act to mortgage its property or franchises, and the property, estate and effects of any such corporation, have been heretofore, or may be hereafter, sold by virtue of any mortgage executed by said corporation; and whenever the purchaser or purchasers thereof shall have acquired title to the same, in the manner prescribed by law, such purchaser or purchasers may associate with him or them any number of persons; and upon making and filing articles of association, as prescribed by this act, such purchaser or purchasers and his or their associates, and their successors and assigns, being residents of this state, shall thereupon become and be a body politic and corporate, and may take and receive a conveyance of and shall thereupon succeed to, possess and exercise and enjoy all the rights, powers, franchises, privileges, easements, liberties, property, estate and effects of which the title shall have been acquired and conveyed as aforesaid.

89 N. Y., 75.

Certificate to state, where corporation was incorporated under general law. § 2. In case the said corporation, whose franchises, privileges, easements, rights, powers, liberties, property, estate and effects shall have been so sold as aforesaid, shall have been incorporated under or by virtue of the provisions of any general statute or statutes of this state for the formation of corporations, the certificate so to be made and filed shall be in the form of, and shall state and set forth the particulars which in and by such statute or statutes were required to be stated and set forth in the original certificate of incorporation or articles of association of the said corporation.

Under special act. § 3. In case the corporation whose franchises, privileges, easements, rights, powers, liberties, property, estate and effects shall have been so sold as aforesaid, shall have been created by any special act of incorporation, then, and in that case, said certificates so to be made and filed shall state and set forth the following particulars, namely:

1. The name of the body politic and corporate so to be formed as aforesaid.
2. The amount of the capital stock thereof, which shall not exceed the amount of the capital stock of the said former or pre-existing corporation authorized by law at the time of such sale as aforesaid, and the number of shares of which the said stock shall consist.
3. The title and time of the passage of the said original act creating the said former corporation, and any other act or acts relating thereto.
4. The number of the directors who shall manage the concerns of the said body politic and corporate, and the names of the first board of directors thereof, and who shall hold their office for one year and until others are chosen in their places.

Filing certificate; new corporation; omission in decrees. § 4. The said certificate shall be executed in duplicate and acknowledged before some officer competent to take acknowledgment of deeds. One of the said duplicates shall be filed in the office of the secretary of state, and the other thereof shall be filed in the office of the clerk of the county in which the said corporation first mentioned in this act had its principal place of business; and, thereupon, the said body politic and

corporate so formed as aforesaid shall exist for the time, and may and shall possess, exercise and enjoy all the powers, privileges, rights, liberties, easements, and franchises possessed by the said former corporation, and in the same manner and to the same extent and with the same force and effect as the same could have been exercised by the said former corporation had not such sale as aforesaid been made. And whenever, by the decree of the court having jurisdiction of the foreclosure proceedings, it has been adjudged, determined and found by the court what powers, privileges, rights, liberties, easements and franchises were possessed and enjoyed by the former corporation at the time of entering such decree and were therein ordered to be sold, the same shall be possessed and enjoyed by the new corporation to which they shall have been conveyed under and by virtue of the decree of foreclosure and sale, as provided for in the act hereby amended. But no omission in such decree to set forth or define any of the rights, privileges or franchises of such former corporation shall in any way impair the rights of such purchasers and of such new corporation to possess and enjoy all that was possessed by the former corporation at the time of such sale. [*Thus amended by L. 1880, ch. 113.*]

Evidence. § 5. A copy of any articles of association filed in pursuance of this act, and certified by the secretary of state and county clerk, with whom the same shall have been filed, or their deputies, to be a true copy of such articles and of the whole thereof, shall be received in all courts and places as legal evidence of the incorporation of the said body politic or corporate, so to be formed as aforesaid.

L. 1877, Chap. 158 — An act extending to corporations located in and organized under the laws of other states, certain rights and powers now possessed by similar corporations of this state.

May purchase at mortgage foreclosure. SECTION 1. It shall be lawful for any corporation, duly organized under the laws of any state in which such corporation shall be located, to purchase under any foreclosure sale based upon any mortgage or mortgages owned by such corporation, or upon judgments or decrees obtained or rendered for debts due to it, or in any settlement effected to secure such debts, any of the lands lying within this state that may be covered by or subject to such mortgages, judgments, decrees or settlements, and also to hold for a term not exceeding five years from the date of such purchase, and to convey such lands by deed or otherwise, in the same manner as though such corporation had been organized under the laws of and located within this state.

L. 1878, Chap. 264 — An act to authorize corporations organized under the laws of this state to reduce their capital stock.

May diminish capital stock; proviso as to effect of act. SECTION 1. Any corporation or company organized under general or a special law of this state, and now existing, or which may hereafter be organized under such general or special law, may diminish its capital stock, by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation. But nothing in this act shall be so construed as to relieve any holder or owner of stock in such corporation from any personal liability existing prior to such reduction; provided, that nothing in this act contained shall be construed to in any manner interfere with, or affect any law now in existence, authorizing any corporation heretofore organized to reduce its capital stock.

36 Hun, 488; 93 N. Y., 426.

Notice of meeting to reduce stock. § 2. Whenever any company shall desire to call a meeting of the stockholders for the purpose of diminishing the amount of its capital stock, it shall be the duty of the trustees or directors to publish a notice signed by at least a majority of them, in a newspaper in the county in which the

business of the company is carried on, or its principal office is located, if any, shall be published therein, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder, at his usual place of residence, at least three weeks previous to the day fixed upon, for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be proposed to diminish the capital; and a vote of at least two-thirds of all the shares of stock shall be necessary to a diminution of the amount of its capital stock.

Stock how reduced. § 3. If at the time and place specified in the notice provided for in the preceding section of this act, the stockholders shall appear in person or by proxy, in numbers representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present in person or by proxy; and if, in canvassing the votes it shall be found that a sufficient number of votes has been given in favor of diminishing the amount of capital, a certificate of the proceedings showing a compliance with the provisions of this act, the amount of capital actually paid in, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be diminished, shall be made, signed and verified by the chairman, and such certificate shall be acknowledged by the chairman and filed in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of state, with the approval of the comptroller indorsed thereon, to the effect that the reduced capital is sufficient for the proper purposes of the company, and is in excess of all debts and liabilities of the company, exclusive of debts secured by trust mortgages, and that the actual market value of the stock of the company prior to the reduction of the capital, was less than the par value of the same, and when so filed the capital stock of such corporation shall be reduced to the amount specified in such certificate; and the amount of capital left in the possession of the company over and above the amount to which the capital shall be so reduced shall be returned to the stockholders *pro rata* at such times and in such manner as the trustees or directors shall determine. [*Thus amended by L. 1882, ch. 306.*]

See Thompson's Nat. Bank Cases, 804.

L. 1880, Chap. 225 — An act to authorize the exchange of preferred stock for common stock of corporations.

Authorized to exchange preferred for common stock. SECTION 1. Every corporation organized under the laws of this state which has heretofore issued, or may hereafter issue, both preferred and common stock, forming part of the capital stock of such corporation, is hereby authorized, whenever the directors of such corporation shall by vote of two-thirds of their number declare it for the interest of the corporation so to do, and the holder of any such preferred stock, may request in writing the exchange of the same for the common stock to exchange the preferred stock of such holder for common stock, and to issue certificates of common stock therefor share for share, or upon such other valuation as may have been agreed upon in the scheme for organization of such company or the issue of such preferred stock; provided, however, that the total amount of the capital stock of such company shall not be increased thereby.

L. 1887, Chap. 450 — An act extending to corporations organized under the laws of other states, and doing business within this state, the right to hold, purchase and convey real estate.

Foreign corporations may hold, etc., real property necessary for their business. SECTION

1. It shall be lawful for any corporation duly organized under the laws of any other state of the United States of America, doing business in this state, to hold

and purchase such real estate or interest in real estate within this state as is or shall be necessary for the use and corporate purposes of such corporation in the transaction of its business within this state, and to convey the same by deed or otherwise in the same manner as though such corporation had been organized under the laws of and located within this state.

ARTICLE SECOND.

**GENERAL ACTS FOR THE INCORPORATION OF COMPANIES FOR MANUFACTURING, MINING, MECHANICAL
AND CERTAIN OTHER INDUSTRIAL PURPOSES, PASSED SINCE THE REVISED STATUTES.**

[The basis of this article is the general act, L. 1848, ch. 40, which has been amended by numerous subsequent statutes, many of which are very obscurely drawn, and some of them palpably erroneous. The condition of the legislation upon this subject is such that a thorough revision is most urgently demanded.. It has been often very difficult for the editor to deter-

mine satisfactorily the effect of amendatory or supplementary statutes, either upon the act of 1848, or upon each other, so as to present the statutory law on this subject as it now is. He has been compelled in many cases to depart from the language used, so as to apply it to the subject, according to the manifest intent of the legislature, and sometimes to leave the manifest intent of the legislature unaccomplished, where the language was incapable of being adapted thereto, without too great violence. He has indicated in his notes the principal difficulties which he has encountered and his conclusions thereupon, so that the reader may exercise his own judgment as to the correctness of the latter.]

L. 1848, Chap. 40—An act to authorize the formation of corporations for manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical or curative, mercantile or commercial purposes.*

Corporations, how formed. SECTION 1. At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical or chemical business, or the business of printing, publishing or selling books, pamphlets or newspapers, or the business of making butter, cheese, concentrated or condensed milk, or any other products of the dairy, or the business of erecting buildings for church sheds or laundry purposes, and the carrying on of laundry business, or the business of slaughtering animals, or for the purpose of towing or propelling canal boats, vessels, rafts or floats on the canals and navigable rivers of the state of New York, by animal or steam power, their operations not to be confined to the county in which their certificates shall be filed, or the supplying of hot water or hot air or steam for motive power, heating, cooking or other useful applications in the streets and public and private buildings of any city, village or town in this state, may make, sign and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of state, a certificate in writing, in which shall be stated the corporate name of the said company, and the objects for which the company shall be formed, the amount of the capital stock of said company, the time of its existence (not to exceed fifty years), the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage the concerns of said company for the first year, and the name of the town and county in which the operations of the said company are to be carried on. [*Thus amended by L. 1882, ch. 309.*]†

30 Barb., 645; 6 Robt., 219; 4 Abb. N. C., 444; 89 N. Y., 409; 44 Hun, 545.

Corporations, how formed. SECTION 1. At any time hereafter any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical or chemical business, or the business of printing, publishing or selling books, pamphlets or newspapers, or advertising the same or other articles, or for the purpose of purchasing, taking, holding and possessing real estate and buildings and selling, leasing and improving the same, or the business of making butter, cheese, concentrated or condensed milk, or any other products of the dairy, or the business of erecting buildings for church sheds or laundry purposes, and the carrying on of laundry business or the business of slaughtering animals, or for the purpose of towing or propelling canal boats, vessels, rafts or floats on the canals and navigable rivers of the state of New York by animal or steam power, their operations not to be confined to the county in which their certificates shall be filed, or the supplying of hot water or hot air or steam for motive power, heating, cooking or other useful applications in the streets and public and private buildings of any city, village or town in this state, may make,

* The title of this act was originally "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes." It was amended as above stated by L. 1866, ch. 838, § 1, *post*. But the second section of the act of 1866, instead of extending this act to the new objects embraced in the amended title, is an independent provision, authorizing the formation of companies for such additional objects, and without any apparent connection with the act of 1848, save the change in its title; so that the change simply made the title of the act of 1848 incongruous with its text.

† This is the last of a series of statutes unqualifiedly amending § 1 of the act of 1848, "so as to read as follows," each of which, under the rulings stated in the prefatory note to this work, repealed its predecessor, and all previous acts making specific amendments to the section. The editor has added four subsequent statutes, affecting the same section, of which L. 1894, ch. 267, L. 1895, ch. 81, and L. 1898, ch. 313, expressly provide that the former amendatory statutes shall not be affected thereby, and L. 1888, ch. 240, is so framed as to leave room for an argument that it constituted an independent enactment, as explained in the note thereto.

sign and acknowledge before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of state, a certificate in writing in which shall be stated the corporate name of the said company and the objects for which the company shall be formed, the amount of the capital stock of said company, the time of its existence (not to exceed fifty years), the number of shares of which the said stock shall consist, the number of trustees and their names who shall manage the concerns of said company for the first year, and the name of the town and county in which the operations of the said company are to be carried on. No company organized under this act for the purpose of taking, purchasing, holding or possessing real estate and buildings and selling, leasing and improving the same shall be permitted to purchase and hold real estate to the value of more than one million dollars, but this act shall not be deemed to repeal or affect in any way any act heretofore passed amendatory of or supplementary to the said act of February seventeen, eighteen hundred and forty-eight, except as herein provided. [*Thus amended by L. 1884, ch. 267.*]*

Corporations, how formed. SECTION 1. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical or chemical business, or the business of printing, publishing or selling books, pamphlets or newspapers, or advertising the same or other articles, or for the purpose of purchasing, taking, holding and possessing real estate and buildings, and selling, leasing and improving the same, or the business of making butter, cheese, concentrated or condensed milk, or any other products of the dairy, or the business of erecting buildings for church sheds or laundry purposes, and the carrying on of laundry business or the business of slaughtering animals, or for the purpose of towing or propelling canal boats, vessels, rafts or floats on the canals and navigable rivers of the state of New York by animal or steam power, their operations not to be confined to the county in which their certificates shall be filed, or the supplying of hot water or hot air or steam for motive power, heating, cooking or other useful applications in the streets and public and private buildings of any city, village or town in this state, or the business of buying, breeding, grazing, pasturing, dealing in and selling cattle, sheep, hogs, horses and other live stock in the United States of America, British North America and elsewhere, may make, sign and acknowledge before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of state, a certificate in writing, in which shall be stated the corporate name of said company and the objects for which the company shall be formed, the amount of the capital stock of said company, the time of its existence (not to exceed fifty years), the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage the concerns of said company for the first year, and the name of the town and county in which the operations of said company are to be carried on. No company organized under this act for the purpose of taking, purchasing, holding or possessing real estate and buildings, and selling, leasing and improving the same, shall be permitted to purchase and hold real estate to the value of more than one million dollars, but this act shall not be deemed to repeal or affect in any way any act heretofore passed amendatory of or supplementary to the said act of February seventeen, eighteen hundred and forty-eight, except as herein provided. [*Thus amended by L. 1885, ch. 84.*]†

[L. 1883, ch. 240, § 1. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical or chemical business, or the business of printing and publishing books, pamphlets and newspapers, or the business of receiving, obtaining, collecting and accumulating items and matters of news, and selling, vending, furnishing and supplying the same, may make,

* The effect of the final clause of this amendment appears to be that the amendment of 1882 is left in force.

† The effect of the final clause of this amendment appears to be that the amendments of 1882 and 1884 are left in force.

sign and acknowledge before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the secretary of state, a certificate in writing, in which shall be stated the corporate name of the said company, and the objects for which the company shall be formed, the amount of the capital stock of the said company, the term of its existence not to exceed fifty years, the number of shares of which the said stock shall consist, the number of trustees and their names who shall manage the concerns of said company for the first year, and the names of the town and county in which the operations of the said company are to be carried on.] *

Corporations, how formed. SECTION 1. At any time hereafter, any three or more persons who may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business, or the business of printing, publishing or selling books, pamphlets or newspapers, or advertising the same or other articles, or for the purpose of purchasing, taking, holding and possessing real estate and buildings, and selling, leasing and improving the same, or the business of making butter, cheese, concentrated or condensed milk, or any other products of the dairy, or the business of erecting buildings for church sheds or laundry purposes, and the carrying on of laundry business or the business of slaughtering animals, or for the purpose of towing or propelling canal boats, vessels, rafts or floats on the canals and navigable rivers of the state of New York by animal or steam power, or for the purpose of buying, storing, selling or shipping coal, merchandise and farm produce, their operations not to be confined to the county in which their certificates shall be filed, or the supplying of hot water or hot air or steam for motive power, heating, cooking or other useful applications in the streets and public and private buildings of any city, village or town in this state, or the business of buying, breeding, grazing, pasturing, dealing in and selling cattle, sheep, hogs, horses and other live stock in the United States of America, British North America and elsewhere, may make, sign and acknowledge before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof, in the office of the secretary of state, a certificate in writing, in which shall be stated the corporate name of said company, and the objects for which the company shall be formed, the amount of the capital stock of said company, the time of its existence (not to exceed fifty years), the number of shares of which the said stock shall consist, the number of trustees and their names, who shall manage the concerns of said company for the first year, and the name of the town and county in which the operations of said company are to be carried on. No company organized under this act for the purpose of taking, purchasing, holding or possessing real estate and buildings, and selling, leasing and improving the same, shall be permitted to purchase and hold real estate to the value of more than one million dollars, but this act shall not be deemed to repeal or affect in any way any act heretofore passed amendatory of or supplementary to the said act of February seventeen, eighteen hundred and forty-eight, except as herein provided. [*Thus amended by L. 1888, ch. 313.*]

When to become bodies corporate. § 2. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in such certificate; and by that name have succession, and shall be capable of suing and being sued in any court of law or equity in this state, and they and their successors may have a common seal, and may make and alter the same at pleasure; and they shall, by their corporate name, be capable in law of purchasing, holding and conveying any real and personal estate whatever which

* This statute amends L. 1857, ch. 262, § 1, "so as to read as follows," i. e., as above stated. The act of 1857, thus amended, amends L. 1848, ch. 40, § 1, not "so as to read as follows," but by inserting eleven words in the body of the section. It was repealed by L. 1874, ch. 149, which is the next of the series of statutes amending § 1 of the act of 1848 "so as to read as follows." The reason for selecting this repealed act for amendment was perhaps known to the draftsman thereof. But it seems that the effect of amending § 1 of the act of 1857, and not § 1 of the act of 1848, which it purported to amend, was to render the act of 1853 an independent enactment, unaffected by subsequent amendments of the act of 1848, and not affecting the previous amendment of that act by L. 1852, ch. 309.

may be necessary to enable the said company to carry on their operations named in such certificate, but shall not mortgage the same or give any lien thereon.*

38 Barb., 622; 4 Hun, 294.

Trustees, number, election of, etc. § 3. The stock, property and concerns of such company shall be managed by not less than three nor more than thirteen trustees, who shall respectively be stockholders in such company, and a majority of whom shall be citizens and residents of this state, who shall, except the first year, be annually elected by the stockholders at such time and place as shall be directed by the by-laws of the company; and public notice of the time and place of holding such election shall be published not less than ten days previous thereto, in the newspaper printed nearest to the place where the operations of the said company shall be carried on; and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company, and the persons receiving the greatest number of votes shall be trustees; and when any vacancy shall happen among the trustees by death, resignation or otherwise, it shall be filled for the remainder of the year in such manner as may be provided for by by-laws of the said company. [Thus amended by L. 1883, ch. 232.]

[See L. 1860, ch. 269, *post*, p. 1962.]

13 Hun, 298.

Election may be held on any day. § 4. In case it shall happen at any time, that an election of trustees shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day, to hold an election for trustees, in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company, until their successors shall be elected.

Officers. § 5. There shall be a president of the company, who shall be designated from the number of the trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office as the company by its by-laws may require.

7 Daly, 826.

Trustees to make calls on stockholders. § 6. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such times, and in such payments or instalments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payment shall not be made by the stockholders within sixty day after a personal demand or notice requiring such payment shall have been published for six successive weeks in the newspaper nearest to the place where the business of the company shall be carried on as aforesaid.

2 Barb., 294; 6 T. & C., 583.

To make by-laws. § 7. The trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this state, and prescribing the duties of officers, artificers, and servants that may be employed; for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

5 Bosw., 284; 6 Robt., 208.

Stock transferable. § 8. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the

* This section is retained unaltered, although L. 1867, ch. 248, after amending § 1 of *this* act, provided that "the second section of *said* act is hereby amended," etc. See *post*, p. 1963, note. See also L. 1864, ch. 317, *post*, p. 1965.

non-payment of calls thereon: And it shall not be lawful for such company to use any of their funds in the purchase of any stock in any other corporation.

[See L. 1866, ch. 838, § 2, *post*, p. 1967.]

59 N. Y., 96.

Copy of certificate to be evidence. § 9. The copy of any certificate of incorporation, filed in pursuance of this act, certified by the county clerk or his deputy, to be a true copy, and of the whole of such certificate, shall be received in all courts and places, as presumptive legal evidence of the facts therein stated.

6 Bosw., 219; 44 Hun, 546.

Liability of stockholders. § 10. All the stockholders of every company incorporated under this act, shall be severally individually liable to the creditors of the company in which they are stockholders, to an amount equal to the amount of stock held by them respectively for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in, and a certificate thereof shall have been made and recorded as prescribed in the following section; and the capital stock, so fixed and limited, shall all be paid in, one-half thereof within one year, and the other half thereof within two years from the incorporation of said company, or such corporation shall be dissolved.

23 N. Y., 553; 18 Barb., 152; 4 Bosw., 406; 28 N. Y., 458; 1 Barb., 297; 50 N. Y., 568; 47 N. Y., 229; 46 N. Y., 591; 6 Robt., 211; 2 Abb. Pr. R., N. S., 73; 6 T. & C., 588; 16 Abb. N. C., 42; 1 J. & S., 231; 52 N. Y., 203; 53 N. Y., 371; 11 Hun, 141; 13 Hun, 408; 57 N. Y., 133; 6 Hun, 55; 3 J. & S., 809; 55 N. Y., 65; 72 N. Y., 100; 73 N. Y., 620; 23 Hun, 256; 36 Hun, 627; 29 Hun, 161, 542; 38 Hun, 327, 461; 40 Hun, 485; 89 N. Y., 334; 90 N. Y., 87, 353; 91 N. Y., 308; 95 N. Y., 295; 88 N. Y., 129; 45 Hun, 198.

Certificate of the payment of stock to be filed. § 11. The president and a majority of the trustees, within thirty days after the payment of the last instalment of the capital stock, so fixed and limited by the company, shall make a certificate stating the amount of the capital so fixed and paid in; which certificate shall be signed and sworn to by the president and a majority of the trustees; and they shall, within the said thirty days, record the same in the office of the county clerk of the county wherein the business of the said company is carried on.

13 Hun, 408; 6 Robt., 208; 42 How. Pr. R., 235; 2 Abb. Pr. R., N. S., 73; 57 N. Y., 133; 29 Hun, 161; 95 N. Y., 295; 44 Hun, 545; 12 Daly, 329.

Report. § 12. Every such company shall within twenty days from the first day of January, if a year from the time of filing of the certificate of incorporation shall then have expired, and, if so long a time shall not have expired, then within twenty days from the first day of January in each year after the expiration of a year from the time of filing such certificate, make a report which shall be published in some newspaper published in the town, city or village, or if there be no newspaper published in said town, city or village, then in some newspaper published nearest the place where the business of the company is carried on, which shall state the amount of capital, and of the proportion actually paid in, and the amount of its existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office of the clerk of the county where the business of the company shall be carried on, and if any of said companies shall fail so to do, all the trustees of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such report shall be made; but whenever under this section a judgment shall be recovered against a trustee severally, all of the trustees of the company shall contribute a ratable share of the amount paid by such trustee on such judgment, and such trustee shall have a right of action against his co-trustees, jointly or severally, to recover from them their proportion of the amount so paid on such judgment; provided that nothing in this act contained shall effect * any action now pending. [Thus amended by L. 1875, ch. 510.]

11 Abb. Pr. R., N. S., 370; 49 N. Y., 183; 50 N. Y., 139; 1 Hun, 336; 2 Hun, 61; 4 Hun, 63, 614; 21 N. Y., 262, 451; 29 Barb., 196; 35 N. Y., 412; 23 N. Y., 459; 27 N. Y., 297; 41

* So in the original.

Barb., 542; 62 Barb., 51; 4 Lana., 513; 2 Sweeny, 659; 3 T. & C., 560; 60 N. Y., 616; 54 N. Y., 679; 60 N. Y., 583; 16 Abb., N. S., 42; 6 J. & S., 142; 14 Hun, 568; 18 Hun, 214; 17 Hun, 207; 69 N. Y., 396; 6 Daly, 76; 63 N. Y., 62; id., 202; id., 624; 12 Hun, 666; 16 Hun, 65; 74 N. Y., 621; 23 Hun, 309; 80 N. Y., 128; 81 N. Y., 49; 16 W. D., 227; 22 W. D., 426; 15 Abb. N. C., 483; 16 J. & S., 241; 19 J. & S., 169; 26 Hun, 48; 32 Hun, 446; 96 N. Y., 323; 101 N. Y., 71, 373; 44 Hun, 64, 101; 91 N. Y., 374; 95 N. Y., 391, 295; 98 N. Y., 170; 99 N. Y., 890; 103 N. Y., 242; 104 N. Y., 618; 22 J. & S., 404; 106 N. Y., 277; 48 Hun, 377; 97 N. Y., 651.

Provision relative to dividends. § 13. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, while they shall respectively continue in office: *Provided*, That if any of the trustees shall object to the declaring of such dividend or to the payment of the same, and shall at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the clerk of the company and with the clerk of the county, they shall be exempt from the said liability.

33 N. Y., 412; 1 Hun, 336; 4 Hun, 648; 56 N. Y., 559; 21 Hun, 568; 36 Hun, 626.

Stock to be paid in cash. § 14. Nothing but money shall be considered as payment of any part of the capital stock, and no loan of money shall be made by any such company to any stockholder therein; and if any such loan shall be made to a stockholder, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the company contracted before the re-payment of the sum so loaned.

47 N. Y., 229; 46 N. Y., 591; 9 Bosw., 160; 57 N. Y., 133; 30 Hun, 314; 90 N. Y., 87; 95 N. Y., 295; 86 N. Y., 95.

Provision respecting false certificate or report. § 15. If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this act, shall be false in any material representation, all the officers who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

55 N. Y., 407; 1 Hun, 336; 3 T. & C., 560; 80 N. Y., 128; 36 Hun, 626; 16 J. & S., 231; 17 J. & S., 492; 83 N. Y., 156; 89 N. Y., 122; 86 N. Y., 95; 101 N. Y., 71; 104 N. Y., 613; 103 N. Y., 425.

Provision respecting stock held by executors, etc. § 16. No person holding stock in any such company, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such company; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner, and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act, and held the same stock in his own name.

41 Barb., 171.

Executors, etc., to vote at meetings. § 17. Every such executor, administrator, guardian or trustee shall represent the share of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid, may nevertheless represent the same at all such meetings, and may vote accordingly as a stockholder.

Liability of stockholders. § 18. The stockholders of any company organized under the provisions of this act, shall be jointly and severally individually liable for all debts that may be due and owing to all their laborers, servants and apprentices, for services performed for such corporation.

4 Robt., 319; 42 How. Pr. R., 111; 61 N. Y., 274; 16 Hun, 186; 17 Hun, 463; 1 Abb. N. C., 127; 11 Hun, 608; 53 N. Y., 371; 16 Hun, 203; 7 Daly, 397; 29 Hun, 39; 90 N. Y., 213.

This act may be altered or repealed. § 19. The legislature may at any time alter, amend or repeal this act, or may annul or repeal any incorporation formed or

created under this act; but such amendment or repeal shall not, nor shall the dissolution of any such company take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

Companies may increase or diminish stock. § 20. Any corporation or company heretofore formed, either by special act or under the general law, and now existing for any manufacturing, mining, mechanical or chemical purposes, or any company which may be formed under this act, may increase or diminish its capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purposes of the corporation, and may also extend its business to any other manufacturing, mining, mechanical or chemical business, subject to the provisions and liabilities of this act. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital; and any existing company, heretofore formed under the general law, or any special act, may come under and avail itself of the privileges and provisions of this act, by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties and liabilities of this act.

46 N. Y., 593; 19 Hun, 577.

[See L. 1872, ch. 611, *ante*, p. 1733.]

Notice thereof to be given. § 21. Whenever any company shall desire to call a meeting of the stockholders, for the purpose of availing itself of the privileges and provisions of this act, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in a newspaper in the county, if any shall be published therein, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting; specifying the object of the meeting, the time and place, when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed, and a vote of at least two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of its capital stock, or the extension or change of its business as aforesaid, or to enable a company to avail itself of the provisions of this act.

19 Hun, 577.

Meetings, how to be organized and conducted. § 22. If at any time and place specified in the notice provided for in the preceding section of this act, stockholders shall appear in person or by proxy, in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy, and if on canvassing the votes it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this act, a certificate of the proceedings, showing a compliance with the provisions of this act, the amount of capital actually paid in, the business to which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman, and filed as required by the first section of this act, and when so filed, the capital stock of such corporation shall be increased or diminished, to the amount specified in such certificate, and the business extended or changed as aforesaid, and the company shall be entitled to the privileges and provisions, and be subject to the liabilities of this act, as the case may be.

Indebtedness of companies. § 23. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of such company.

36 Hun, 622; 37 Hun, 341.

Saving clause. § 24. No stockholder shall be personally liable for the payment of any debt contracted by any company formed under this act, which is not to be paid within one year from the time the debt is contracted, nor unless a suit for the collection of such debt shall be brought against such company within one year after the debt shall become due; and no suit shall be brought against any stockholder who shall cease to be a stockholder in any such company, for any debt so contracted, unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in such company, nor until an execution against the company shall have been returned unsatisfied in whole or in part.

53 N. Y., 371; 47 Barb., 161; 41 Barb., 171; 35 How. Pr. R., 75; 50 N. Y., 568; 6 Hun, 55; 14 Hun, 605; 74 N. Y., 137; 76 N. Y., 9; 23 Hun, 256; 27 Hun, 307; 89 N. Y., 338; 88 N. Y., 129; 95 N. Y., 295; 90 N. Y., 353; 107 N. Y., 96; 29 Hun, 39.

Book containing the names of stockholders to be kept with amount of stock. § 25. It shall be the duty of the trustees of every such corporation or company, to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons alphabetically arranged, who are or shall, within six years, have been stockholders of such company, and showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; and the amount of stock actually paid in; which book shall, during the usual business hours of the day, on every day except Sunday and the fourth day of July, be open for the inspection of stockholders and creditors of the company, and their personal representatives, at the office or principal place of business of such company, in the county where its business operations shall be located; and any and every such stockholder, creditor or representative, shall have a right to make extracts from such book; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this act, until it shall have been entered therein as required by this section, by an entry showing to and from whom transferred. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff, in any suit or proceeding against such company, or against any one or more stockholders. Every officer or agent of any such company, who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts to be taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured, a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom: And every company that shall neglect to keep such book open for inspection as aforesaid, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the name of the people, by the district-attorney of the county in which the business of such corporation shall be located; and when so recovered, the amount shall be paid into the treasury of such county for the use thereof.

15 Barb., 152; 52 N. Y., 203; 13 Hun, 492; 41 Hun, 20; 43 Hun, 188.

General powers. § 26. Every corporation created under this act shall possess the general powers and privileges and be subject to the liabilities and restrictions contained in title third, chapter eighteen of the first part of the Revised Statutes, and the provisions of section six, article first, title two, chapter thirteen of the first part of the Revised Statutes, shall apply to every such corporation. [*Thus amended by L. 1861, ch. 170.*]

45 Hun, 193.

When treasurer to render statement of assets, etc.; forfeiture. § 27. Whenever any person or persons owning five per cent of the capital stock of any company, not exceeding one hundred thousand dollars, or any person or persons owning three

per cent of the capital stock of any company exceeding one hundred thousand dollars, formed under the provisions of this act, shall present a written request to the treasurer thereof that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of said company, under oath, embracing a particular account of all its assets and liabilities, in minute detail, and to deliver such statement to the person who presented the said written request to said treasurer, within twenty days after such presentation, and shall also at the same time and place keep on file in his office, for six months thereafter, a copy of such statement, which shall at all times during business hours be exhibited to any stockholder of said company demanding an examination thereof; such treasurer, however, shall not be required to deliver such statement in the manner aforesaid, oftener than once in any six months. If such treasurer shall neglect or refuse to comply with any of the provisions of this act, he shall forfeit and pay to the person presenting said written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof. [*Sec. 27 added by L. 1854, ch. 201, and thus amended by L. 1862, ch. 472, § 1.*]

43 Hun, 188.

[*L. 1862, ch. 472, § 2.* Should not any such written statement as is required by section one of this act, be demanded during the year preceding the annual meeting of the stockholders of any company, formed under the provisions of this act, for the election of directors or trustees, it shall be the duty of the treasurer of every such company to prepare and exhibit to the stockholders then and there assembled, a general statement of the assets and liabilities of such company. 43 Hun, 189.]

L. 1851, Chap. 14 — An act to extend the operation and effect of the act passed February 17, 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes."

Extended to raising of vessels. SECTION 1. Any three or more persons may organize and form themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeen, one thousand eight hundred and forty-eight, for the purpose of constructing and using machines for the raising of vessels or other heavy bodies.

Not limited to county. § 2. Every corporation so formed shall be subject to all the provisions, duties and obligations contained in the above-mentioned act, and shall be entitled to all the benefits and privileges thereby conferred, except that such corporations shall not be confined in their operations to the county in which their certificate shall be filed.

L. 1853, Chap. 333 — An act to amend an act to authorize the formation of corporations for manufacturing, mining, mechanical and chemical purposes, passed February 17, 1848.

Certificate. SECTION 1. Any certificate hereafter filed, under the provisions of the above entitled act, may designate one or more places where the company may carry on their business.

38 Hun, 326; 40 Hun, 485; 44 Hun, 545.

Company may purchase mines, manufactories, etc., and issue stock. § 2. The trustees of such company may purchase mines, manufactories, and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor; and the stock so issued shall be declared and taken to be full stock, and not liable to any further calls; neither shall the holders thereof be liable for any further payments under the provisions of the tenth section of the said act; but in all statements and reports of the company, to be published, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the fact.

57 N. Y., 133; 55 N. Y., 407; 47 N. Y., 228; 46 N. Y., 592; 17 Hun, 207; 14 Hun, 468; 18 Hun, 914; 63 N. Y., 93; 78 N. Y., 100; 21 Hun, 472; 80 N. Y., 128; 86 N. Y., 95; 89 N. Y., 132; 90 N. Y., 87; 46 Hun, 248; 106 N. Y., 277.

L. 1855, Chap. 301 — An act to extend the operation and effect of the act passed February 17, 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

Extended to preserving ice. SECTION 1. Any three or more persons may organize themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations, for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, one thousand eight hundred and forty-eight, for the purpose of collecting, storing and preserving ice, of preparing it for sale, of transporting it to the city of New York or elsewhere, and of vending the same.

Made subject to other laws. § 2. Every corporation so formed shall be subject to all the provisions, duties and obligations contained in the above-mentioned act, and shall be entitled to all the benefits and privileges thereby conferred, except that such corporations shall not be confined in their operations to the county in which their certificate shall be filed.

32 Hun, 475 ; 99 N. Y., 181.

L. 1857, Chap. 29 — An act to amend an act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February 17, 1848.

Salt companies when to pay in stock. SECTION 1. No incorporated company organized or hereafter to be organized for the manufacture of salt, under the "Act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February 17, 1848, shall be deemed dissolved, or shall be dissolved, on account of the capital stock of such company not being paid in, the one-half within one year, and the other half within two years from the incorporation of such company, provided that such stock shall be paid in within four years from the organization of such company.

Extension of existence. § 2. Whenever any company, formed under said act, shall have fixed the duration of its corporate existence for a less period than it was privileged to do by the first section of said act, it may by a vote of the stockholders representing a majority of the stock, and upon executing and acknowledging a new or amended certificate under its corporate seal, signed by the president and two-thirds of its directors, or trustees, and filing the same in the county where its business shall be carried on, and in the office of the secretary of state, extend the term of its corporate existence from time to time, to a period not longer in the aggregate than it could have originally fixed the same, and shall thereupon possess all the powers and privileges, and be subject to all the liabilities mentioned in said act, during such extension of its existence. [*Thus amended by L. 1867, ch. 12.*]

Principal place of business. § 3. If any company shall be formed under said act, for the purpose of carrying on any part of its business, in any place out of this state, the said certificate shall so state, and shall also state the name of the town and county in which the principal part of the business of said company within this state is to be transacted, and said town and county shall be deemed the town, place and county in which the operations and business of the company are to be carried on, and its principal place of business within the meaning of the provisions of this act.

19 Hun, 259 ; 44 Hun, 545.

L. 1860, Chap. 269 — An act to amend the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical and chemical purposes," passed February seventeenth, eighteen hundred and forty-eight.

Number of trustees. SECTION 1. The act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical and chemical pur-

poses," passed February seventeenth, eighteen hundred and forty-eight, is hereby amended so as to allow corporations to be hereafter organized under said act, with not less than three and not more than thirteen trustees, instead of being limited to nine in number, as provided in said act.

[See L. 1883, ch. 232, amending § 3 of the general act, *ante*, p. 1956.]

Trustees, number of, how increased or reduced. § 2. The number of trustees in any corporation, organized before, or since, the eleventh day of April, eighteen hundred and sixty, or which shall hereafter be organized under the said act, may be increased to not more than thirteen, or may be reduced to not less than three, as follows: The existing trustees of any such corporation, or a majority of them, shall make and sign a certificate, declaring how many trustees the corporation shall have in the future management of its business, and, in case the number of trustees be increased, stating the names of the new, or additional trustees, and, in case the number of trustees be reduced, stating the number to which the trustees shall be reduced; which certificate shall be acknowledged by the trustees signing the same, or proved by a subscribing witness, and shall be filed in the office of the clerk of the county where the original certificate of incorporation was filed, and a duplicate or transcript thereof, duly certified under the official seal of such clerk, filed in the office of the secretary of state; and, in the case of an increase of the number of trustees, from and after the filing of such certificate and duplicate or transcript, the trustees of such corporation shall be deemed increased to the number therein stated, and the persons so named in such certificate shall be trustees until a new election of trustees shall be had, according to the said act, and the by-laws or regulations of such corporation. And in the case of the reducing of the number of trustees, the number stated in such certificate as the number of trustees which shall manage the business of such corporation, shall be deemed the number of trustees of such corporation to be elected, according to said act, and the by-laws and regulations of such corporation, at the next election and thereafter, after the filing of such certificate and duplicate or transcript; and in case a vacancy or vacancies shall occur in the board of trustees of such corporation, by resignation or otherwise, after the filing of such certificate and duplicate or transcript reducing the number of trustees, before the next election of trustees after such filing, no election shall be had in the meantime to fill such vacancy or vacancies while the number of trustees remaining shall equal or exceed the number to which the trustees are reduced in such certificate. [*Thus amended by L. 1878, ch. 316.*]¹

6 Hun, 236.

L. 1861, Chap. 170—An act to amend an act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight.

[Section 1 amends L. 1843, ch. 40.]

Place of business. § 2. No company organized under the provisions of said act to authorize the formation of corporations for manufacturing, mining, mechanical

¹ The first section of the amendatory act, L. 1878, ch. 316, commences as follows:

SECTION 1. The second section of chapter two hundred and forty-eight of the laws of eighteen hundred and sixty-seven, entitled, "An act to amend the act passed April eleventh, eighteen hundred and sixty, chapter two hundred and sixty-nine, entitled 'An act to amend the act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical and chemical purposes,' passed February seventeenth, eighteen hundred and forty-eight,'" is hereby amended so as to read as follows:

Then follows the matter which the editor has inserted above, as an amendment to L. 1860, ch. 269, § 2.

The act amended, L. 1867, ch. 248, is entitled:

An act to amend the act passed April eleventh, eighteen hundred and sixty, chapter two hundred and sixty-nine, entitled "An act to amend the act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical and chemical purposes,'" passed February seventeenth, eighteen hundred and forty-eight.

There is no mention, in the body of the act of 1867, of the act of 1860. The first section amends § 1 of the general manufacturing act, L. 1843, ch. 40, describing it correctly; the second section proceeds thus: "§ 2. The second section of the said act is hereby amended so as to read as follows," etc. This is the section amended by the act of 1878. By resorting to the title of the act of 1867, the editor has been able to discover the intent of the legislature, and he has followed it out. Whether the courts will do so, if any question should arise thereupon, must be left to the reader's judgment.

or chemical purposes shall be deemed or taken to have a principal office or place for transacting its financial concerns other than that at which the operations of said company are carried on, unless within the month of May in each year the president and treasurer, or a majority of the trustees, shall make duplicate certificates stating the amount of the then capital of said company, and the portion of such capital not invested in real estate, and stating that such company then has a principal office for transacting its financial concerns in a county other than that in which the operations of said company are carried on, stating the town or city and county in which such financial office is located, and that the president and treasurer, and a majority of the trustees of said company are then actually residents of the town or city in which such financial office is then located, which duplicate certificates shall be signed and sworn to by the persons making the same and filed, the one in the clerk's office of the county where the operations of said company are carried on, and the other in the clerk's office of the county in which such financial office shall be. And in case in any year such duplicate certificates shall be made and filed as aforesaid, then during the year succeeding the first day of June next after the filing of such certificates, the personal estate of such company shall be assessed only in the town or ward named in said certificates, as that in which such financial office is located.

44 Hun, 545.

L. 1863, Chap. 63—An act to extend the operation and effect of the act passed February seventeen, eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

Extended to mineral water. SECTION 1. Any three or more persons may organize themselves into a corporation, in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeen, eighteen hundred and forty-eight, for the purpose of bottling and selling mineral water drawn from any natural mineral spring.

Corporations subject to certain provisions. § 2. Every corporation so formed shall be subject to all the provisions, duties and obligations contained in the above mentioned act, and shall be entitled to all the benefits and privileges thereby conferred.

90 N. Y., 213.

L. 1864, Chap. 337—An act to extend the operation and effect of the act passed February seventeen, eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

Corporations for navigation purposes and for obtaining salvage. SECTION 1. Any three or more persons may organize and form themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, one thousand eight hundred and forty-eight, for the purpose of constructing, owning, and using vessels and machines to be employed for hire in towing vessels, carrying freight and passengers, and in aiding, protecting and saving vessels and their cargoes, wrecked or in distress, on any of the navigable rivers and lakes in or bordering upon the state of New York, or on the high seas, or in the various arms of the seas and rivers running into the same, with all the rights appertaining by law to private individuals performing services as salvors.

Limits of such corporations. § 2. Every corporation so formed, shall be subject to all the provisions, duties and obligations contained in the above mentioned act, and shall be entitled to all the benefits and privileges thereby conferred,

except that such corporations shall not be confined in their operations to the county in which their certificate shall be filed.

Corporations for constructing and using elevators and warehouses. § 3. Any three or more persons are hereby authorized to organize themselves into a corporation in a manner provided by the said act, and with all the powers, benefits and privileges thereby conferred, and subject to all the duties, liabilities and restrictions therein imposed, for the purpose of carrying on the business of constructing, maintaining and using stationary and floating elevators, or warehouses, for all purposes pertaining to, or connected with trade or commerce in the several kinds of grain in the state of New York, or for the purpose of purchasing a suitable lot and erecting thereon a building, to be used as a skating rink, and for holding fairs, meetings, exhibitions and all other lawful entertainments and amusements. [*Thus amended by L. 1868, ch. 781.*]

L. 1864, Chap. 517 — An act to amend an act entitled “An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes,” passed February 17, 1848.

Place of business may be changed. SECTION 1. Any company formed under the act entitled “An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,” passed February seventeen, eighteen hundred and forty-eight, may change its place or places of business by a vote of the stockholders, representing two thirds of the stock, at any meeting of the stockholders regularly called, and executing and acknowledging an amended certificate specifying the names of the towns or cities from and to which the business location of the company is to be changed, and in other respects conforming to the original certificate, which amended certificate shall be signed by the president and two thirds of the directors of the company, and shall be filed in the office of the secretary of state, and in the office of the clerk of the county where the business operations of the company are to be carried on, and published weekly in two papers in the towns or cities from and to which the business operations have been removed, and are to be carried on, for the term of three months. But the property of said company shall be liable to taxation in any county where such property may be, or in which its business may be done to the extent of its property in any such county.

Mortgaging of real or personal estate, to secure debts; validity of mortgage; assent of two thirds of capital requisite. § 2. Any corporation formed under the said act, passed February seventeenth, eighteen hundred and forty-eight, or of the acts amending or extending the said act, may secure the payment of any debt heretofore contracted, or which may be contracted by it, in the business for which it was incorporated, by mortgaging all or any part of the real or personal estate of such corporation; and every mortgage so made shall be as valid to all intents and purposes, as if executed by an individual owning such real or personal estate, provided, that the written assent of the stockholders, owning at least two thirds of the capital stock of such corporation shall first be filed in the office of the clerk of the county where the mortgaged property is situated. [*Thus amended by L. 1871, ch. 481.*]

65 N. Y., 43; 7 Hun, 44; 69 N. Y., 328; 80 N. Y., 345; id., 599; 26 Hun, 643; 44 Hun, 133; 85 N. Y., 453; 96 N. Y., 467; 99 N. Y., 547; 94 N. Y., 334.

L. 1865, Chap. 234 — An act to authorize the formation of corporations for agricultural purposes.

Corporations, how organized. SECTION 1. Any three or more persons may organize and form themselves into a corporation in the manner specified and required in and by the act entitled “An act to authorize the formation of corporations for

manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, for the purpose of propagating, cultivating and developing the different varieties of the grape, and the manufacture of wines and brandies therefrom, and cultivating sugar-cane, cotton, rice, tobacco, indigo and other products of the earth, for preparing the same for market, and for transporting and disposing of the same. Every corporation so formed shall be subject to all the provisions and obligations contained in the aforesaid act, and the several acts amendatory of the same, so far as they are or may be applicable, and shall be entitled to all the benefits and privileges conferred by said act and amendatory acts; except that such corporations shall not be confined in their operations to the counties in which their certificate shall be filed.

L. 1865, Chap. 307 — An act to extend the operation and effect of the act passed February seventeenth, eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

Extended to coal and peat. SECTION 1. Any three or more persons may organize and form themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, for the purpose of buying and selling and transporting coal and peat of all kinds.

Corporations subject to certain provisions. § 2. Every corporation so formed shall be subject to all the provisions, duties and obligations contained in the above mentioned act, and amendments thereto, and shall be entitled to all the benefit and privileges thereby conferred, except that such corporation shall not be confined in their operations to the county in which their certificate shall be filed.

L. 1866, Chap. 73 — An act to amend an act entitled, "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight.

Number of shares may be increased. SECTION 1. Any company formed under the act entitled, "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, may increase the number of shares of which its capital stock consists; provided the capital stock of such company shall not thereby be increased or diminished.

Increase how made. § 2. Such increase shall be made by a vote of the stockholders in favor thereof, representing two thirds of the capital stock, at any meeting of the stockholders called in the manner prescribed in the act hereby amended, and by executing and acknowledging an amended certificate specifying the number of shares of which the said capital stock of said company shall thereafter consist, and the par value of each share, and in other respects conforming to the original certificate, which amended certificate shall be signed by the president and two thirds of the directors of the company, and shall be filed in the office of the secretary of state, and in the clerk's office of the county where the original certificate was filed.

Certificate to stockholder. § 3. Each stockholder shall be entitled to a certificate for such a number of shares of said capital stock after the whole number has been increased as aforesaid, as shall at their par value be equal to the par value of the shares theretofore held by him in such company, on surrendering the certificates for said shares so held by him to be cancelled; provided that such increase shall not so divide the shares as to give the fractional part of a share to any stockholder.

L. 1866, Chap. 371—An act to extend the operation and effect of the act passed February seventeenth, eighteen hundred and forty-eight, entitled “An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes.”

[By L. 1874, ch. 143, § 16, *post*, p. 2004, it is forbidden to organize any more companies under this act. As the act of 1874 has no connection with this, and § 16 refers to supplementary and amendatory acts, it is probable that some other statute was meant. But so the act of 1874 reads.]

Act extended to water for mining. SECTION 1. Any three or more persons may organize and form themselves into a corporation in the manner specified and required in and by the act entitled “An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,” passed February seventeenth, eighteen hundred and forty-eight, for the purpose of accumulating, storing, conducting, furnishing and supplying water for mining purposes, and may acquire, take, hold, lease and convey lands and water power suitable for those purposes.

Corporations subject to certain provisions. § 2. Every corporation so formed and the stockholders thereof shall be subject to all the provisions, duties and obligations contained in the above mentioned act, and shall be entitled to all the benefits and privileges thereby conferred, except that such corporations shall not be confined in their operations to the county in which their certificate shall be filed.

Former incorporations may proceed hereunder. § 3. It shall and may be lawful for any corporation heretofore incorporated for mining purposes under the act mentioned in the first section, to conduct the business for which the formation of corporations is authorized by said first section, provided the intention so to do shall be specified among the objects for which such corporation is formed in its certificate of incorporation.

L. 1866, Chap. 838—An act to amend an act entitled “An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,” passed February seventeenth, eighteen hundred and forty-eight.

Title changed. SECTION 1. The title of the act entitled “An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,” passed February seventeenth, eighteen hundred and forty-eight, is hereby amended so as to read as follows: “An act to authorize the formation of corporations for manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical or curative, mercantile or commercial purposes.”

Agricultural, horticultural, medical, and curative associations; what certificate shall state. § 2. At any time hereafter, any three or more persons may form a corporation for the purpose of carrying on any kind of manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical or curative business, may make, sign and acknowledge, before some officer competent to take acknowledgment of deeds, and file the same in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate in the office of the secretary of state, a certificate in writing in which shall be stated the corporate name of said company and the objects for which it shall be formed, the amount of its capital stock, the number of shares of which said stock shall consist, the term of its existence not exceeding fifty years, the number of its trustees and the names of those who shall manage the concerns of the company for the first year, and the names of the town or city and county in which the operations of said company shall be carried on.

May hold stock in certain companies. § 3. It shall be lawful for any company heretofore or hereafter organized under the provisions of this act, or the act hereby amended, to hold stock in the capital of any corporation engaged in the business of mining, manufacturing or transporting such materials as are required in the

prosecution of the business of such company so long as they shall furnish or transport such materials for the use of such company and for two years thereafter, and no longer; and also to hold stock in the capital of any corporation which shall use or manufacture materials, mined or produced by such company; and the trustees of such company shall have the same power with respect to the purchase of such stock and issuing stock therefor as are now given by the law with respect to the purchase of mines, manufactories and other property necessary to the business of manufacturing, mining and other companies. But the capital stock of such company shall not be increased without the consent of the owners of two thirds of the stock to be obtained as provided by sections twenty-one and twenty-two of the act hereby amended. [*Thus amended by L. 1876, ch. 358.*]

Officer in two companies. § 4. When any such manufacturing company shall be a stockholder in any other corporation, its president or other officers shall be eligible to the office of trustee of such corporation, the same as if they were individually stockholders therein.

L. 1867, Chap. 960 — An act to authorize the consolidation of corporations organized under the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, or any of the acts amending or extending the same.

Consolidation, how effected. SECTION 1. Any two or more corporations organized under the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, or any of the acts amending or extending the same, whenever the objects for which such companies had been respectively organized were the same or of a similar nature, are hereby authorized to consolidate such companies into a single corporation in manner following: The trustees of any two or more of such corporations may enter into and make an agreement, under their respective corporate seals, for the consolidation of the said corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of trustees thereof (not less than three nor more than thirteen), the names of the trustees who shall manage the concerns of the new company for the first year and until others shall be elected in their places, the name of the town or towns, county or counties, in which the operations of the new company are to be carried on; and if such companies proposed to be consolidated, or either of them, shall have been organized for the purpose of carrying on any part of their or its business in any place out of this state, and the said new company shall propose to carry on any part of its business out of this state, the said agreement shall so state, and it shall also state the name of the town or city and county in which the principal part of the business of said new company within this state is to be transacted; the amount of capital and number of shares of the stock into which the same is to be divided (which capital shall not be larger in amount than the aggregate amount of capital of the several companies thus to be consolidated, and shall not be increased except in accordance with the provisions of the said first mentioned act, passed February seventeenth, eighteen hundred and forty-eight); the manner of converting the shares of capital stock in each of said corporations into the shares of such new corporation, with such other particulars as they may deem necessary, not inconsistent with the provisions of the said act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, and the acts amending or extending the same. [*Thus amended by L. 1877, ch. 374.*]

Agreement to be submitted to stockholders; stockholder objecting to consolidation can receive payment for his stock. § 2. Such agreement of the directors shall not be deemed to be the agreement of the said corporations so proposing to consolidate,

until after it has been submitted to the stockholders of each of said corporations respectively, separately, at a meeting thereof to be called upon a notice of at least thirty days, specifying the time and place of such meeting and the object thereof, to be addressed to each of such stockholders, when their place of residence is known to the secretary, and deposited in the post-office, and published for at least three successive weeks in the state paper, and in one of the newspapers published in each of the counties in which either of the said corporations shall have its place of business, and has been sanctioned and approved by such stockholders, by the vote of at least two thirds in amount of the stockholders present at such meetings respectively, voting by ballot in regard to such agreement, either in person or by proxy, each share of such capital stock being entitled to one vote; and when such agreement of the directors has been sanctioned and approved by each of the meetings of the respective stockholders separately, after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said several corporations; and a sworn copy of the proceedings of such meetings, made by the secretaries thereof respectively, and attached to the said agreement, shall be evidence of the holding and of the action of such meetings in the premises. If any stockholder shall, at said meeting of stockholders or within twenty days thereafter, object to the said consolidation and demand payment for his stock, such stockholder or said new company may, if said consolidation take effect at any time thereafter, apply to the supreme court, at any special term thereof held in any county in which the said new corporation may have its place of business, for the appointment of three persons to appraise the value of said stock, and shall designate the time and place of meeting of such appraisers, and give such directions in regard to the proceedings on said appraisal as shall be deemed proper, and shall also direct the manner in which payment for such stock shall be made to such stockholder. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock, at the time of such dissent as aforesaid, and deliver one copy of their appraisal to the said company and another to the said stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the new company. When the corporation shall have paid the amount of the appraisal, as directed by the court, such stockholder shall cease to have any interest in the said stock and in the corporate property of the said corporation, and the said stock may be held or disposed of by the said corporation.

Duplicates of agreement to be filed with county clerk and the secretary of state. § 3. Upon the making, sanctioning and approving of the said agreement, in the preceding sections mentioned, in the manner therein required, and the filing of the duplicates or counterparts thereof, and of the verified written assent of stockholders mentioned in the preceding section, in the office of the clerk of the county where the operations of said new corporation are to be carried on, and in the office of the secretary of state, then and immediately thereafter the said corporations agreed to be consolidated shall be merged in the new corporation provided for in the said agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein, only such new corporation shall not have any larger powers than are granted by the said act mentioned in the first section hereof, and the acts amending and extending the same, nor be exempt from the performance of any duty which the said several corporations may be liable to perform.

Powers of company. § 4. Such new company shall possess the general powers and be subject to the general liabilities and restrictions expressed in the third title of the eighteenth chapter of the first part of the Revised Statutes, and to all the liabilities and restrictions to which either of the companies from which it has been formed was subject. It shall also have the general powers and privileges, and be subject to the general liabilities, restrictions, duties and provisions

expressed and contained in the said act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight; and the acts amending or extending the same, so far as the same may be applicable to a corporation organized for the purposes expressed in the said agreement for consolidation, and for which said new company shall have been organized.

Rights, franchises, etc., to belong to the new corporation. § 5. Upon the consolidation of said corporations and the organization of said new company, as hereinbefore prescribed, all and singular the rights, franchises and interests of the said several corporations so consolidated in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer; and such new corporation shall hold and enjoy the same, and all rights of property franchises, and interests, in the same manner and to the same extent as if the said several corporations so consolidated should have continued to retain the title and transact the business of such corporations, and the title and real estate acquired by either of the said corporations shall not be deemed to revert or be impaired by means of such act of consolidation or anything relating thereto.

Rights of creditors not to be impaired by the consolidation. § 6. The rights of creditors of any corporations that shall be so consolidated shall not in any manner be impaired by any act of consolidation, nor shall any liability or obligation for the payment of any money now due or hereafter to become due to any person or persons, or any claim or demand in any manner or for any cause existing against any such corporation or against any stockholder thereof, be in any manner released or impaired, but such new corporation is declared to succeed to such obligations and liabilities, and to be held liable to pay and discharge all such debts, and liabilities of each of the corporations that shall be so consolidated, in the same manner as if such new corporation had itself incurred the obligation or liability to pay such debt or damages; and the stockholders of the respective corporations so entering into such consolidation shall continue subject to all the liabilities, claims and demands existing against them as such at or before such consolidation; and no suit, action or other proceeding then pending before any court or tribunal in which any corporation that may be so consolidated is a party, or in which any such stockholder is a party, shall be deemed to have abated or discontinued by reason of any such consolidation, but the same may be prosecuted to final judgment in the same manner as if the said corporations had not entered into the said agreement of consolidation, or the said new corporation may be substituted as a party in the place of any corporation so consolidated as aforesaid with any other corporation or corporations and forming such new corporation, by order of the court in which such action, suit or proceeding may be pending.

Consolidated companies. § 7. No companies consolidated under this act shall be permitted to prosecute or carry on more than one kind of business authorized by the said act passed February seventeenth, eighteen hundred and forty-eight.

L. 1869, Chap. 706 — An act with reference to mortgages by corporations organized under the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeen, eighteen hundred and forty-eight, and the acts amending or extending the same.

Assent to mortgage, how evidenced. SECTION 1. In all cases where a corporation shall have heretofore made or shall hereafter make a mortgage of any of its real estate situated beyond the limits of this state, and the recording officer of the county in which such real estate is situated shall have refused, or shall refuse, to file or record the assent as now required by law, it is hereby declared to be and to have been a sufficient filing of the assent of the stockholders, if such assent

shall have been or shall hereafter be filed in the office of the clerk of the county where the company has its principal place of business within this state.

L. 1871, Chap. 535 — An act to extend the operation and effect of the act passed February seventeenth, one thousand eight hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

Corporators; objects. SECTION 1. Any three or more persons may organize themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, for the purpose of purchasing, acquiring, maintaining and improving real estate for residences, homesteads and apartment houses, to be leased and conducted by the corporation so formed, and occupied by the stockholders thereof, and others, and also for the purpose of purchasing, acquiring, maintaining, improving and managing a building or buildings which shall contain a hall for public meetings and entertainments; and apportioning and distributing the same among the stockholders and members of such corporation, and also for filling in and improving lands. The corporation so formed shall be subject to all the provisions and obligations of the act aforesaid, and the acts amendatory thereof, and it shall have power to take and hold by purchase, contract or lease, and convey such real estate as shall be necessary to carry out the objects of said corporation; and it may distribute and apportion the same and the rent, income and proceeds thereof among its members and stockholders in such manner as shall be determined by its by-laws; and may sell and convey to purchasers thereof such real estate as said corporations may have acquired by purchase or otherwise, provided, however, that it shall not be lawful for said corporation to hold at any one time real estate, the market value of which shall exceed the sum of five hundred thousand dollars. [*Thus amended by L. 1881, ch. 589.*]

L. 1873, Chap. 814 — An act to extend the operation and effect of the act passed February seventeen, eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

Number of corporators; purposes. SECTION 1. Any nine or more persons may organize themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeen, eighteen hundred and forty-eight, for the purposes of building, manufacturing, owning, furnishing, letting, selling and maintaining locomotive engines, cars, rolling stock and machinery to be used or operated upon railways, or any one or more of such purposes.

Benefits and privileges. § 2. Every corporation so formed shall be entitled to all the benefits and privileges conferred by the before-mentioned act, and may contract and transact its business with any railway company or other person engaged in the operation of any railway in the United States or Canada, but shall otherwise be subject to all the provisions, duties and obligations in the said act contained.

L. 1875, Chap. 88 — An act in relation to mortgages made by manufacturing companies.

Filing consent of stockholders nunc pro tunc. SECTION 1. In all cases where a corporation has heretofore executed a mortgage upon any of its real estate, and the

written consent of persons owning two thirds or more of the capital stock of such corporation shall have been given to the mortgaging of such real estate, at or before the time of the giving of such mortgage, but from accident or mistake the said consent has not been filed in the office of the clerk of the county in which such real estate is situated, as required by law, it shall be lawful for the clerk of such county to receive and file in his office the written consent so given, accompanied by the affidavit of any officer or stockholder of such corporation showing that such consent was in fact made and signed at the time the same purports to have been made and signed, and that the signatures thereto are genuine; and in such case, on filing such consent and affidavit, the said mortgage shall have the like validity and effect from and as of the time of the filing of such consent and affidavit as if the same had been given at that time, and had been accompanied or preceded by the filing of such consent; provided, that nothing herein contained shall affect any action or legal proceeding now pending, or impair any intermediate right acquired by lien or otherwise in or to the property of the corporation affected by such mortgage.

96 N. Y., 467.

L. 1875, Chap. 113 — An act to extend the operation and effect of the act passed February seventeenth, eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

Oil companies. SECTION 1. Any three or more persons may organize and form themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations for manufacturing, mining and mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, for the storage, conveyance and transportation of petroleum and other oils, so that under, said act and the acts amendatory thereof, it shall be lawful to form companies for carrying on the business of storing, conveying and transporting petroleum and other oils, and of doing all things necessary and proper therefor, subject to such laws or regulations as are now or may hereafter be in force in the several cities of this state where such business may be conducted relating to the storage and safe-keeping of petroleum and other oils.

Corporations subject to certain provisions. § 2. Every corporation so formed shall be subject to all the provisions, duties and obligations contained in the above-mentioned act, and shall be entitled to all the benefits and privileges thereby conferred.

L. 1875, Chap. 365 — An act to extend the operation and effect of the act passed February seventeen, eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes."

Dredging, etc., companies. SECTION 1. Any three or more persons may organize and form themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, one thousand eight hundred and forty-eight, for the purpose of constructing and using machines for dredging and filling of land, and dock building, or for the construction and operation of inland wharves and basins, and the purchase, improvement and sale thereof.

Corporations subject to certain provisions. § 2. Every corporation so formed shall be subject to all the provisions, duties and obligations contained in the above-mentioned act, and shall be entitled to all the benefit and privileges thereby conferred.

L. 1878, Chap. 163—An act to authorize corporations formed for manufacturing, mining, mechanical or chemical purposes to mortgage their property and franchises.

Mortgage on property and franchise. SECTION 1. Any company formed under the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeen, eighteen hundred and forty-eight, or of the acts amending or extending said act, may secure the payment of any debt heretofore contracted, or which may be contracted by it, in the business for which it was incorporated, by mortgaging all or any part of the goods and chattels of such corporation, and also the franchises, privileges, rights and liberties thereof, provided that the written assent of a majority of the stockholders, owning at least two-thirds of the capital stock of such corporation, shall first be filed in the office of the clerk of the county where the corporation has its principal place of business, and also in the office of the clerk of the county where such goods and chattels are situated.

94 N. Y., 334; 99 N. Y., 547; 101 N. Y., 614.

L. 1880, Chap. 85—An act supplemental to chapter forty of the laws of eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," and the amendments made thereto.

Organization of water companies. SECTION 1. Any three or more persons may organize and form themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, and the amendments thereof and supplements thereto, for the purpose of accumulating, storing, conducting, selling, furnishing and supplying water for mining, domestic, manufacturing, municipal and agricultural purposes, and may acquire, take, hold, lease and convey lands and water power suitable for those purposes.

Liability of company and stockholders. § 2. Every corporation so formed and the stockholders thereof shall be subject to all the provisions, duties and obligations contained in the above-mentioned act, and shall be entitled to all the benefits and privileges thereby conferred, except that such corporations shall not be confined in their operations to the county in which their certificate shall be filed.

Mining companies may conduct business authorized by first section. § 3. It shall and may be lawful for any corporation heretofore incorporated, or hereafter to be incorporated, for mining purposes, under the act mentioned in the first section of this act, to conduct the business for which the formation of corporations is authorized by said first section; provided the intention so to do shall be, or, as the case may be, shall have been specified among the objects for which such corporation is or shall be formed in its certificate of incorporation. [*Thus amended by L. 1887, ch. 486.*]

But must file certificate of such intention. § 4. It shall and may be lawful for any corporation heretofore incorporated for mining purposes, under chapter forty of the laws of eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," or under any amendment of or supplement to the said acts, to conduct the business for which the formation of corporations is authorized by this act; provided a certificate signed and acknowledged by a majority of the trustees of the said corporation shall be filed in the office of the clerk of the county where the original certificate of incorporation was filed, and a certified copy thereof in the office of the secretary of state, stating that the said corporation intends to avail itself of the provisions of this act, and to carry on the business provided for in this act in addition to the business specified in the said original certificate of incorporation.

Corporation may acquire title to land in same manner as railroad companies. § 5. Any corporation formed under this act for the purpose among other things of supplying cities with water, may acquire title to land for the purposes of their business, in the same manner specified and required in and by the act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty, and the acts amendatory thereof and supplemental thereto, and such corporation may lay pipes for the purpose of conducting water for the purposes of their business under any of the navigable waters of this state, provided they are so laid as not to interfere with the navigation of such waters. No corporation shall be formed under this act for the purpose of accumulating, storing, conducting, furnishing or supplying water for domestic, manufacturing or municipal purposes in the city of New York. [Thus amended by L. 1881, ch. 472.]

May make contracts to furnish water. § 6. Such corporation so formed under this act may contract with any corporation in this state, public or private, to furnish water for any of the purposes in this act mentioned, and every corporation in this state is hereby authorized to enter into such contracts with such corporations formed under this act. [Thus amended by L. 1881, ch. 472.]

L. 1880, Chap. 241—An act to amend chapter 290 of the laws of 1879, entitled "An act to amend chapter 149 of the laws of 1874, entitled 'An act to amend an act, passed April 27, 1872, entitled 'An act to amend chapter 657 of the laws of 1871, entitled 'An act to amend an act, passed February 17, 1848, entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,'" passed April 20, 1871, and to legalize the formation and acts of certain corporations formed according to the provisions of chapter 374 of the laws of 1877.

[Section 1 amends the general act of 1848.]

Corporations for towing or propelling vessels. § 2. The organization of any corporation for the purpose of towing or propelling canal boats, vessels, rafts or floats on the canals and navigable rivers of the state of New York, by animal or steam power, their operations not to be confined to the county in which their certificate shall be filed, formed since the passage of chapter three hundred and seventy-four of the laws of eighteen hundred and seventy-seven, and all the acts of the trustees of any such corporation, organized in compliance with the provisions of such last-named chapter, are hereby made as legal in all respects as if the said last-named chapter had remained in full force, and every such corporation so organized is hereby declared to have existence and to have the same powers and privileges in all respects as if the said act, being chapter three hundred and seventy-four of the laws of eighteen hundred and seventy-seven, had been in full force in all respects at the time of the formation of any such corporation.

L. 1880, Chap. 263—An act for the protection of corporations organized for generating and distributing steam for heating and other purposes.

[Sections 1, 2 and 3 repealed by L. 1886, ch. 593.]

Agent authorized to enter buildings and examine meter; penalty for interfering with agent. § 4. Any corporation organized under the laws of this state for the purposes aforesaid may make an agreement with any of its customers by which any officer or agent of such corporation, duly authorized in writing, signed by the president or secretary of said corporation, shall be authorized at all reasonable times to enter any dwelling, store, building, room or places supplied with steam by such corporation and occupied by said customer for the purpose of inspecting and examining the meters, devices, pipes, fittings, and appliances for supplying or regulating the supply of steam, and for ascertaining the quantity of steam consumed, or the quantity of water resulting from the condensation of steam

consumed. Every such agreement so made in writing shall further provide that such officer or agent shall exhibit his written authority if requested by the occupant of such dwelling, store, building, room or place. Any person who shall directly or indirectly prevent or hinder such officer or agent from entering such dwelling, store, building, room or place, or from making such inspection or examination, in violation of his agreement with said corporation, shall forfeit and pay to the corporation the sum of twenty-five dollars for each offence.

Agent may enter and cut off, under what contingencies. § 5. If any person or persons, corporation or association, supplied with steam by such corporation organized under the laws of this state for the purposes aforesaid, shall neglect or refuse to pay the rent or remuneration for such steam, or for the meter, device, pipes, fittings or appliances, let by such corporation for supplying steam, or for ascertaining the quantity of steam consumed, or the quantity of water resulting from the condensation of the steam consumed, agreed upon or due for the same, as required by his, their or its contract with such corporation, the latter may thereupon stop and prevent the steam from entering the premises of such person, persons, corporation or association so neglecting or refusing to pay such rent or remuneration. The said corporation may also, in any of the cases enumerated in this act, in which a person is liable to pay a forfeiture or is liable to fine or imprisonment, or both such fine and imprisonment, stop and prevent the steam from entering the premises of the person so liable, or if such person be an officer or agent of any corporation or association, stop and prevent the steam from entering the premises of the corporation or association of which the person so liable is an officer or agent. In all cases in which such corporation is authorized to stop and prevent the steam from entering any premises, it may by its officers, agents or workmen, enter into or on such premises between the hours of eight o'clock in the forenoon and six o'clock in the afternoon, and cut off, disconnect, separate, and carry away any meter, device, pipe, fitting or other property of the said corporation; and may cut off, disconnect, and separate any meter, device, pipe or fitting, whether the property of the corporation or not, from the mains or pipes of said corporation. Any person who, without the consent of such corporation, shall open, or cause to be opened, any valve closed under the provisions of this section by any corporation organized under the laws of this state for the purposes aforesaid, or reconnect or cause to be reconnected, any connection disconnected by any such corporation under such provisions, or turn on steam, or cause the same to be turned on, or to re-enter any premises when the same has been stopped and prevented from entering them by such corporation as provided in this section, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding two hundred and fifty dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment. [*Thus amended by L. 1883, ch. 237.*]

[Section 6 repealed by L. 1886, ch. 593.]

L. 1883, Chap. 549 — An act to require steam companies to supply steam for heating.

Companies to be known as district steam companies. SECTION 1. Any company heretofore organized, or which may hereafter be organized, for the purpose of supplying steam to consumers from a central station or stations through pipes laid in the public streets, shall be known as a district steam company.

Upon application of owner, etc., company to supply steam; penalty; deposit may be required. § 2. Upon the application, in writing, of the owner or occupant of any building or premises within one hundred feet of any street main laid down by any such district steam company, and payment by him of all money due from him to the company, the company shall supply steam as may be required for heating such building or premises, notwithstanding there may be rent or compensation in arrears for steam supplied, or for meter, pipe or fittings furnished to a former occupant thereof, unless such owner or occupant shall have undertaken or agreed

with the former occupant to pay or to exonerate him from the payment of such arrears, and shall refuse or neglect to pay the same; and if for the space of twenty days after such application, and the deposit (if required) of a reasonable sum to cover the cost of connection and two months' steam supply, the company shall refuse or neglect to supply steam as required, the company shall forfeit and pay to such applicant the sum of ten dollars, and the further sum of five dollars for every day thereafter during which such refusal or neglect shall continue; provided that no such company shall be required to lay a service pipe for the purpose of supplying steam to any applicant, where the ground in which such pipe is required to be laid shall be frozen, or shall otherwise present serious obstacles to laying the same; nor unless the applicant, if required, shall deposit in advance with the company a sum of money sufficient to pay for two months' steam supply and the cost of the necessary connections and of the erection of a meter and such other special apparatus as are required for use in connection with such steam supply, nor unless the applicant shall provide the space and right of way necessary for the erection, maintenance and use of such connections and apparatus, nor unless the said applicant shall first signify his assent in writing to the reasonable regulations of the company with reference to the supply of steam to consumers.

L. 1884, Chap. 367 — An act to authorize the consolidation of manufacturing corporations.

Boards of directors may enter into agreement for consolidation. SECTION 1. Any two or more corporations heretofore or hereafter organized under any general or special law of this state for the purpose of carrying on any kind of manufacturing business of the same or of a similar nature, are hereby authorized to consolidate such companies into a single corporation in the manner following: The respective boards of directors, or of the trustees, of any two or more of such corporations may enter into and make an agreement, under their respective corporate seals, for the consolidation of the said corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of the trustees thereof (not less than three nor more than thirteen), the names of the trustees who shall manage the concerns of the new company for the first year, and until others shall be elected in their places, the term of existence of such new company, not exceeding fifty years, the name of the town or towns, county or counties in which the operations of the new company are to be carried on; and if such companies proposed to be consolidated, or either of them, shall have been organized for the purpose of carrying on any part of their or its business in any place out of this state, and the said new company shall propose to carry on any part of its business out of this state, the said agreement shall so state, and it shall also state the name of the town or city and county in which the principal part of the business of said new company within this state is to be transacted; the amount of capital, the number of shares of the stock into which the same is to be divided (which capital shall not be larger in amount than the fair aggregate value of the property, franchises and rights of the several companies thus to be consolidated, but which may be increased in accordance with the provisions of the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, and any acts amending the same), and the manner of distributing such capital among such consolidated corporations or the holders of the stock of the same, with such other particulars as they may deem necessary.

Agreement to be submitted to stockholders; those objecting may have stock appraised and paid for. § 2. Such agreement of the directors shall not be deemed to be the agreement of the said corporations so proposing to consolidate until after it has been submitted to the stockholders of each of such corporations respectively, separately, at a meeting thereof to be called upon a notice of at least thirty days, specifying the time and place of such meeting and the object thereof, to be ad-

dressed to each of the said stockholders when their place of residence is known to the secretary, and deposited in the post-office, and published for at least three successive weeks in one of the newspapers published in each of the counties of this state in which either of the said corporations shall have its place of business, and has been sanctioned and approved by such stockholders by the vote of at least two-thirds in amount of the stockholders present at such meetings respectively, voting by ballot in regard to such agreement, either in person or by proxy, each share of such capital stock being entitled to one vote; and when such agreement of the directors has been sanctioned and approved by each of the meetings of the respective stockholders separately, after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said several corporations; and a sworn copy of the proceedings of such meetings made by the secretaries thereof, respectively, and attached to the said agreement, shall be evidence of the holding and of the action of such meetings in the premises. If any stockholder shall, at said meeting of the stockholders, or within twenty days thereafter, object to the said consolidation and demand payment for his stock, such stockholder or said new company, if consolidation take effect at any time thereafter, may apply at any time within sixty days after such meeting of the stockholders to the supreme court, at any special term thereof held in any county in which the said new corporation may have its place of business, upon at least eight days' notice to the new company, for the appointment of three persons to appraise the value of said stock, and said court shall appoint three such appraisers and shall designate the time and place of the first meeting of such appraisers, and give such directions in regard to the proceedings on said appraisement as shall be deemed proper, and shall also direct the manner in which payment for such stock shall be made to such stockholder. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent as aforesaid, and deliver one copy of their appraisal to the said new company, and another to the said stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the new company. When the new corporation shall have paid the amount of the appraisal, as directed by the court, such stockholder shall cease to have any interest in the said stock and in the corporate property of the said corporation, and the said stock may be held or disposed of by the said new corporation.

When and how corporations to be consolidated. § 3. Upon the making, sanctioning and approving of the said agreement in the preceding sections mentioned in the manner therein required, and the filing of the duplicates or counterparts thereof, and of the verified copy of the proceedings of the meeting of the stockholders mentioned in the preceding section in the office of the clerk of the county in this state where the operations of such new corporation are to be carried on, and in the office of the secretary of state, then, and immediately thereafter, the said corporations agreed to be consolidated shall be merged into the new corporation provided for in the said agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein.

General powers, etc., of new corporation. § 4. Such new company shall possess the general powers and be subject to the general liabilities and restrictions expressed in the third title of the eighteenth chapter of the first part of the Revised Statutes, and shall be entitled to enjoy the rights, franchises and privileges possessed by each of the companies from which it has been formed, subject, however, to the liabilities, restrictions, duties and provisions expressed and contained in the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, and the acts amending or extending the same, so far as the same may be applicable to a corporation organized for the purposes

expressed in the said agreement for consolidation, and for which said new company shall have been organized.

Property, rights, etc., transferred to new corporation. § 5. Upon the consolidation of the said corporations, and the organization of such new company, as hereinbefore prescribed, all and singular the rights, privileges, franchises and interests of every kind belonging to or enjoyed by the said several corporations so consolidated, and every species of property, real, personal and mixed, and things in action thereunto belonging, mentioned in said agreement of consolidation, shall be deemed to be transferred to and vested in and may be enjoyed by such new corporation, without any other deed or transfer; and such new corporation shall hold and enjoy the same, and all rights of property, privileges, franchises and interests in the same manner, and to the same extent, as if the said several companies so consolidated had continued to retain the title and transact the business of such corporations, and the title to real and personal estate, and rights and privileges acquired and enjoyed by either of the said corporations shall not be deemed to revert or be impaired by such act of consolidation, or anything relating thereto.

Rights of creditors, etc. § 6. The rights of creditors of any corporations that shall be so consolidated shall not in any manner be impaired by any act of consolidation, nor shall any liability or obligation for the payment of any money now due or hereafter to become due to any person or persons, or any claim or demand in any manner, or for any cause existing against any such corporation, or against any stockholder thereof, be in any manner released or impaired; but such new corporation is declared to succeed to such obligations and liabilities and to be held liable to pay and discharge all such debts and liabilities of each of the corporations that shall be so consolidated, in the manner as if such new corporation had itself incurred the obligation or liability to pay such debt or damages; and the stockholders of the respective corporations so entering into such consolidation shall continue subject to all the liabilities, claims and demands existing against them as such at or before such consolidation; and no suit, action or other proceeding then pending before any court or tribunal in which any corporation that may be so consolidated is a party, or in which any such stockholder is a party, shall be deemed to have abated or been discontinued by reason of any such consolidation; but the same may be prosecuted to final judgment in the same manner as if the said corporations had not entered into the said agreement of consolidation; or the said new corporation may be substituted as a party in the place of any corporation so consolidated as aforesaid with any other corporation or corporations and forming such new corporation, by order of the court in which such action, suit or proceeding may be pending.

Business of new corporation. § 7. Any new company organized under this act shall be permitted to prosecute or carry on any kind of business authorized by the charter of either of the companies which have been consolidated.

NOTE TO THIS ARTICLE.—For statutes enabling corporations to be formed under the general act, L. 1848, ch. 40, and supplementary acts, for purposes other than those enumerated in § 1 of the act of 1848, see the titles appropriate to the objects of the formation thereof.

ARTICLE THIRD.

BUSINESS CORPORATIONS, WITH LIMITED OR UNLIMITED LIABILITY OF STOCKHOLDERS, AS REGULATED BY THE ACT OF 1875, AND THE STATUTES SUPPLEMENTARY THERETO.

L. 1875, Chap. 611—An act to provide for the organization and regulation of certain business corporations.

For what purposes. SECTION 1. Corporations may be organized under the provisions of this act for the carrying on of any lawful business except banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations

intended to derive profit from the loan or use of money, or safe-deposit companies, including the renting of safes in burglar and fire-proof vaults.

General powers. § 2. When so organized, every such corporation shall possess the following general powers:

1. To have succession by its corporate name for the period limited in its certificate of incorporation.

2. To sue and be sued; to complain and defend in any court.

3. To make and use a common seal and alter the same at pleasure.

4. To appoint such subordinate officers and agents as the business of the corporation shall require, and its by-laws shall provide for.

5. To make by-laws for the management of its property, the regulation of its affairs, for the transfer of its stock, and defining the duties of its officers, and from time to time to amend the same.

6. To purchase, hold and possess so much real and personal estate as shall be necessary for the transaction of its business, and sell and convey the same when not required for the uses of the corporation; provided, however, that all real estate acquired in satisfaction of any liability or indebtedness, unless the same be necessary and suitable for the uses and business of the corporation, shall be sold within three years after becoming the property of such corporation, but such time may be extended to a period not exceeding five years in all, by an order of the supreme court made in the district in which the principal business office of such corporation is located, on the verified petition of such corporation, stating the reasons for such extension.

20 J. & S., 97; 36 Hun, 488.

Certificate of incorporation. § 3. Whenever five or more persons, a majority of whom shall be citizens and residents of this state, shall propose to form a corporation under the provisions of this act, they shall make a certificate to that effect, which certificate shall be signed by each of such persons and duly acknowledged by them before some officer authorized to take acknowledgments under the laws of this state. Such certificate shall set forth:

1. The name of the proposed corporation.

2. The object for which it is to be formed, including the nature and locality of its business.

3. The amount and description of the capital stock.

4. The number of shares of which such capital stock shall consist.

5. The location of the principal business office.

6. The duration of the corporation, which, however, shall not exceed fifty years.

Secretary of state to issue license. § 4. Such certificate shall be filed in the office of the secretary of state; and the secretary of state shall thereupon issue a license to the persons making such certificate, empowering them as commissioners to open books for subscriptions to the capital stock of such corporation at such times and places as they may determine; but no license shall be issued in the case of a proposed corporation having the same name as an existing corporation in this state, or a name so nearly resembling that of an existing corporation as to be calculated to deceive.

Subscriptions to capital stock; meeting of subscribers. § 5. Said commissioners shall proceed to open books for subscriptions to the capital stock of such corporation, and no such subscription shall be received, unless at the time of making it the person so subscribing shall pay to said commissioners ten per cent of the par value of the stock subscribed for in cash. When one-half of the capital stock has been subscribed, said commissioners shall call a meeting of the subscribers for the purpose of adopting by-laws for such corporation and electing directors thereof. Notice of such meeting shall be given to every subscriber, by depositing in the post-office, properly addressed to his last known place of residence, and postage prepaid, at least five days before the time fixed, a written or printed notice, stating the time, place and object of such meeting.

25 Hun, 91; 19 Abb. N. C., 73, 76, 79.

By-laws. § 6. The by-laws of every corporation created under the provisions of this act shall be deemed and taken to be its law, and shall provide:

1. The number of directors of the corporation.
2. The term of office of such directors, which shall not exceed one year.
3. The manner of filling vacancies among directors and officers.
4. The time and place of the annual meeting.
5. The manner of calling and holding special meetings of the stockholders.
6. The number of stockholders who shall attend, either in person or by proxy, at every meeting, in order to constitute a quorum.
7. The officers of the corporation, the manner of their election by and among the directors, and their powers and duties. But such officers shall always include a president, a secretary, and a treasurer.
8. The manner of electing or appointing inspectors of election.
9. The manner of amending the by-laws.

Record of subscribers' meeting to be filed; certificate of incorporation; fees of secretary of state; of county clerk; amendment of by-laws. § 7. Within ten days after the said subscribers' meeting, said commissioners shall file, in the office of the secretary of state, a verified record of the proceedings thereof, containing a copy of the subscription list, a copy of the by-laws adopted, and the names of the directors chosen. Thereupon the secretary of state shall issue to said directors a certificate, setting forth that said corporation is fully organized in accordance with this act. Such certificate shall include a copy of the original certificate provided for in section three of this act, the date and place of the subscribers' meeting, the names of the directors elected, and a statement that all the provisions of this act have been duly observed in the organization of such corporation. A copy of such certificate shall, within ten days after the issuing thereof by the secretary of state, be filed in the office of the clerk of the county in which the principal business office of such corporation is situated. Such certificate shall be recorded at length in a book to be kept in the office of the secretary of state, to be known as the record of incorporations, and also in a similar book in the office of the county clerk aforesaid. Such certificate, or a copy thereof duly certified by the secretary of state or his deputy, shall be presumptive evidence of the incorporation of the corporation named therein, in all courts and proceedings in this state. The secretary of state shall receive for the filing and issuing of all the necessary documents in and about the organization of a corporation under this act, the sum of ten dollars; and for each certified copy of certificate of incorporation, the sum of three dollars, which sum shall be paid into the treasury of the state; and county clerks shall receive the fees now allowed by law. Upon every amendment of the by-laws of any such corporation, a copy of the amended by-law shall be filed in the office of the secretary of state and of such county clerk, and shall not take effect until so filed; and a copy thereof, certified by the secretary of state or his deputy, shall be received as presumptive evidence of such amended by-law in all courts and proceedings.

Failure to organize. § 8. Unless such corporation shall be fully organized as provided in the last preceding section, within one year after the issuing of the license to commissioners to open books, such license shall be deemed to be revoked, and all proceedings thereunder shall be void.

Secretary of state to publish statement. § 9. The secretary of state shall publish, as an appendix to the session laws of each year, a statement of all the corporations organized under this act during the preceding year, containing in each case the name of the corporation, its principal business, the location of its principal business office; the amount of capital stock, the date of the filing of the preliminary certificate and of the granting of the final certificate of incorporation by the secretary of state; and any change of location or capital of any such corporation made during the preceding year.

Business to be managed by board of directors; number of directors; quorum; duty of secretary and treasurer. § 10. The business of every corporation created hereunder

shall be managed by a board of directors (the members of which at their election and throughout their term of office shall be stockholders in such corporation to at least the extent of five shares, and shall hold their offices until their successors are chosen), and by such officers, to be elected by and from among said directors, as the by-laws shall prescribe. The number of directors shall not be less than five nor more than thirteen, and the existing number thereof may be changed to not less than five nor more than thirteen, by a vote of a majority in interest of the owners of the stock issued by said corporation, present in person, or by attorney duly authorized, at a meeting of the stockholders of such corporation called pursuant to such a notice, specifying the purpose of such meeting and given to each stockholder, as is prescribed in section five of this act; and a statement of the change of the number of directors so made, signed and verified by the president or a vice-president of the corporation and by the secretary of the meeting at which the change was made, shall be filed in the office of the secretary of state, and a copy thereof in the office of the clerk of the county in which the principal business office of the company is situated, within ten days after such meeting. A majority of the whole number of directors shall be necessary to constitute a quorum. The secretary shall record all the votes of the corporation and the minutes of its transactions in a book to be kept for that purpose. The treasurer shall give bonds in such sums and with such sureties as are required by the by-laws for the faithful discharge of his duties. [*Thus amended by L. 1881, ch. 422.*]

Capital stock; subscriptions when payable; penalties for failure to pay instalments. § 11. The capital stock of every corporation formed under this act shall be divided into shares of not less than ten dollars, nor more than one hundred dollars each; and shall in no case exceed five million dollars. All subscriptions therefor shall be made payable to the corporations in such instalments and at such time or times as shall be fixed by the by-laws or by the directors acting under the by-laws; and if default be made in any payment, an action may be maintained in the name of the corporation to recover any instalment which shall remain due and unpaid for the period of thirty days after the time so fixed for the payment thereof; and no stockholder shall be entitled to vote at any election or at any meeting of the stockholders on whose share or shares any instalments or arrearages may have been due and unpaid for the period of thirty days immediately preceding such election or meeting. The corporation may, by by-laws, prescribe other penalties for a failure to pay the instalments that from time to time become due, not exceeding forfeiture of the stock, and the amount paid thereon, but no such forfeiture shall be declared against any stockholder before demand shall have been made for the amount due thereon, either in person or by a written or printed notice duly mailed to such stockholder at his last known place of residence at least thirty days prior to the time when such forfeiture is to take effect; and provided, further, that upon such forfeiture the shares of stock held by such delinquent stockholder or subscriber shall be sold at public auction, at the office of said corporation, after ten days' notice thereof shall be conspicuously posted up in said office, and the proceeds of such sale, over and above the amount due on said shares and after deducting the expenses of such sale, if any, shall be paid to the delinquent stockholder or subscriber. [*Thus amended by L. 1883, ch. 102.*]

Certificate of stock. § 12. The directors of such corporation shall prepare certificates of stock, and shall deliver them, signed by the president and treasurer and sealed with the seal of the corporation, to each person entitled to receive the same, according to the number of shares held, which certificates of stock shall be transferable at the pleasure of the holder, in person or by attorney duly authorized, subject, however, to all payments due or to become due thereon; and the assignee to whom the same has been so transferred shall be a member of said corporation, and have and enjoy all the immunities, privileges and franchises, and be subject to all the liabilities, conditions and penalties incident thereto, in the same manner as the original holder would have been; but no certificate shall be transferred so long as the holder thereof is indebted to such corporation unless the board of directors shall consent thereto.

May borrow money; mortgage real property. § 13. It shall be lawful for all such corporations to borrow money for the legitimate purposes of such corporation, and for such purpose to issue bonds with or without coupons attached thereto, or to mortgage any real estate which it may have or possess, and bearing interest not exceeding six per centum per annum; but the amount of such bonds and such mortgages outstanding at any one time shall not exceed one-half of the value of the corporate property of such corporation. Any issue of such bonds and such mortgages beyond the amount herein specified, shall render every director voting the same, personally liable to any holder of such bonds or such mortgages, for any damage caused by such over-issue to such holder. No such mortgage or mortgages shall be issued, however, without first having obtained the written assent of its stockholders owning more than two-thirds of the stock of said corporation. [*Thus amended by L. 1888, ch. 394.*]

Issue of stock. § 14. No corporation organized under this act shall issue either stock or bonds except for money, labor done, or property actually received for the use and legitimate purposes of such corporation at its fair value, and all fictitious increase of stock or indebtedness in any form shall be void.

Increase or decrease of capital stock. § 15. The capital stock of any corporation organized under this act may be increased to an amount not to exceed in the aggregate two million dollars, or reduced by a vote of a majority of the stockholders in number, and representing a majority of the stock of such corporation, at any meeting thereof convened for that purpose, pursuant to notice thereof specifying the object of such meeting, and served pursuant to the provisions of section five. A statement of such increase or reduction shall be filed in the office of the secretary of state, and of the clerk of the county in which the principal business office of such corporation is situated, within ten days after such action. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be first satisfied and reduced so as not to exceed such diminished amount of capital.

36 Hun, 488; 22 J. & S., 117.

Books of account. § 16. It shall be the duty of the directors of every such corporation to cause to be kept at its principal office or place of business, correct books of account of all its business and transactions, and every stockholder in such corporation shall have the right at all reasonable times by himself or his attorney to examine the records and books of account of such corporation.

Book of stockholders. § 17. It shall be the duty of the directors of every such corporation to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabetically arranged, who are or shall within six years have been stockholders of such corporation, and showing their places of residence, the number of shares of stock held by them, respectively, and the time when they, respectively, became the owners of such shares, and the amount actually paid thereon; which book shall, during the usual business hours of the day, on every day, except Sundays and legal holidays, be open for the inspection of stockholders and creditors of the corporation, and their personal representatives, at the principal business office of such corporation; and any and every such stockholder, creditor or representative shall have a right to make extracts from such book; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the corporation according to the provisions of this act, until it shall have been entered therein as required by this section, by an entry showing from and to whom transferred. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff in any suit or proceeding against such corporation, or against any one or more stockholders. Every officer or agent of any such corporation, who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, and extracts to

be taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor; and the corporation shall forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom. And every corporation that shall neglect to keep such book open for inspection as aforesaid, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the name of the people of the state by the district attorney of the county in which the principal business office of such corporation is located, and the amount so recovered shall be paid to the proper authorities for the support of the poor of such county.

Annual report; penalty for failure. § 18. Every such corporation shall annually, within twenty days after the first day of January, or, in case of such corporation doing business without the United States, then within twenty days after the first day of April, make a report, as of the said first day of January, which shall state the amount of capital, and the proportion actually paid in, the amount and, in general terms, the nature of its existing assets and debts, and the names of its then stockholders, and the dividends, if any, declared since the last report; which report shall be signed by the president and a majority of the directors, and shall be verified by oath of the president or secretary of such corporation, and filed in the office of the secretary of state; and if any such corporation shall fail so to do, all the directors thereof shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be contracted before such report shall be made. Provided, however, that any such corporation doing business without the United States, shall still be required to make such report, within twenty days after the first day of January, in each year as aforesaid, unless such corporation shall make and file in the office of the secretary of state, within twenty days after the first day of January in each year, a certificate verified by the oath of the president, secretary or treasurer of such corporation, stating that said corporation is at the date of such certificate, doing business without the United States, and such certificate shall be conclusive evidence for the purposes of this section, that such corporation is actually doing business without the United States, and provided that if any director shall file with the secretary of state, at any time within thirty days after such first day of January, or first day of April, as the case may be, a certificate, verified by the oath of such director, stating that he has endeavored to have such report made and signed as aforesaid, but that the officers or a majority of the directors have refused or neglected to make and file such report; and shall append to such certificate a report containing the items aforesaid, so far as they are within his knowledge or are obtainable from sources of information open to him, which report shall be verified by him as being true to the best of his knowledge, information and belief, in that case such director shall not be liable on account of such failure to make and file such report upon making proof of such facts in any action which may be commenced against him, upon the trial thereof. Whenever, under this section, a judgment shall be recovered against a director, severally, all the directors of the corporation shall contribute a ratable share of the amount paid by such director on such judgment, and such director shall have a right of action against his co-directors, jointly or severally, to recover from them the proportion of the amount so paid on such judgment. [*Thus amended by L. 1884, ch. 208.*]

22 J. & S., 117.

Dividends. § 19. If the directors of any such corporation shall declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, the directors voting in favor of declaring such dividend shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be thereafter contracted while they shall respectively continue in office.

Loans to stockholder. § 20. No loan of money shall be made by any such corporation to any stockholder therein, and if any such loan shall be made to a stockholder, the officers who shall make it, or who shall assent thereto, shall be jointly

and severally liable to the extent of such loan and interest for all the debts of the corporation contracted before the repayment of the sum so loaned.

False certificates. § 21. If any certificate or report made, or public notice given, by the officers of any such corporation shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the corporation contracted while they are officers thereof.

36 Hun, 365, 488; 22 J. & S., 117; 42 Hun, 459; 19 Abb. N. C., 73.

Liability of directors. § 22. If the indebtedness of any such corporation shall at any time exceed the amount of its capital stock, the directors of such corporation creating such indebtedness shall be personally and individually liable for such excess to the creditors of such corporation.

36 Hun, 365.

Trustees of stock. § 23. No person holding stock in any such corporation, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder of such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner, and to the same extent, as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act, and held the same stock in his own name.

Vote of executors, etc. § 24. Every such executor, administrator, guardian or trustee shall represent the share or shares of stock in his hands at all meetings of the corporation, and may vote accordingly as a stockholder, and every person who shall pledge his stock as aforesaid may nevertheless represent the same at all such meetings, and may vote accordingly as a stockholder.

Limitation on stockholder's liability. § 25. No stockholder shall be personally liable for the payment of any debt contracted by any corporation formed under this act, which is not to be paid within two years from the time the debt is contracted, nor unless an action for the collection of such debt shall be brought against such corporation within two years after the debt shall become due; and no action shall be brought against any stockholder who shall cease to be a stockholder in any such corporation for any debt so contracted, unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in such corporation.

7 Daly, 397; 16 J. & S., 127.

Annual election of directors. § 26. The annual elections of directors shall be held at such time and place as shall be designated by the by-laws of the corporation, and public notice of such time and place shall be published, not less than ten days previous thereto in a newspaper published in a city or town in which the principal business office of the corporation is situated, if a newspaper be published therein, and otherwise in the newspaper published nearest to said office; and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. No person shall be permitted to vote upon the proxy of a stockholder in any such corporation after the lapse of eleven months from the date thereof, unless the stockholder shall have specified therein that it is to continue in force for some longer and limited time. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as shall equal the number of his shares multiplied by the number of directors to be elected and he may distribute his votes among those to be voted for as he sees fit; and the persons receiving the greatest number of votes shall be directors, and when any vacancy shall occur among the directors by death, resignation or otherwise, it shall be filled for the remainder of the year in such manner as may be provided for by the by-laws of the said corporation.

Failure of election. § 27. In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of said corporation, when it ought to have been made, the corporation, for that reason, shall not be dissolved, but it shall be lawful, on any other day within three months

thereafter, to hold an election for directors, upon service of notice upon the stockholders thereof respectively in the manner provided in section five of this act; and all acts of directors shall be valid and binding as against such corporation until their successors shall be elected.

Inspectors of election. § 28. Every person acting as an inspector of election in any such corporation shall, before entering upon the duties of his office, take and subscribe an oath or affirmation before some officer authorized to administer the same, that he will discharge the duties of his office with fidelity, and that he will not receive any vote but such as he believes to be legal, nor reject any which he believes to be legal; and if any such inspector shall violate this oath or affirmation, he shall be subject to all the penalties imposed by law upon inspectors of general state elections in this state violating their duty, and shall be proceeded against in like manner and with like effect.

Duration of corporate existence. § 29. Whenever any corporation organized under this act has fixed the duration of its corporate existence for a less period than fifty years, it may, at any time, extend the term of its existence beyond the time mentioned in the original certificate of incorporation by the consent of the stockholders owning two-thirds in amount of the capital stock of such corporation, in and by a certificate to be signed by such stockholders, in person or by attorney duly authorized and acknowledged or proved, so as to enable it to be recorded, which certificate shall be filed in the office of the secretary of state; and of the clerk of the county in which the principal business office of such corporation is situated, and the said secretary of state, and the county clerk respectively upon such filing, shall record the same in the record of corporations kept in his office, and make a memorandum of such record in the margin of the original certificate in such record book; and thereupon the time of existence of such corporation shall be extended, as designated in such certificate, for a term which, with the term originally fixed, will not exceed fifty years.

Taxes. § 30. Every corporation organized under this act shall be taxed on all of its property, except its real estate, in the town, city or village, where its principal business office is situated, and on its real estate in the town, city or village where such real estate is situated shall be taxed therein.

Change of place of business. § 31. Such corporation may change its principal place of business by the consent of the stockholders owning two-thirds in amount of the capital stock of such corporation, in and by a certificate to be signed by such stockholders in person or by attorney duly authorized and acknowledged or proved, which certificate shall be filed in the office of the secretary of state, and of the clerk of the county in which the principal business office of such corporation is situated; and the secretary of state and county clerk respectively shall, upon such filing, record the same in the record of corporations kept in his office, and make a memorandum of such record in the margin of the record of the original certificate recorded in such office, and thereupon the principal business office of such corporation shall be deemed to be changed as stated in said certificate.

Under what provisions and in what mode existing or future corporations may organize under this act. § 32. Any corporation heretofore or hereafter organized under the general laws of this state, except such corporations as are particularly excepted by the first section of this act from organizing thereunder, may come under and avail itself of the privileges and provisions of this act by complying with the following provisions: The directors of such corporation shall publish a notice, signed by at least a majority of them, in a newspaper published in the county in which the principal business office thereof is situated, for at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, postage prepaid, addressed to each stockholder, at his last known place of residence, at least three weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, and the time and place when and where such meeting shall be held. At the time and place specified in the notice, the stockholders shall organize by choosing one of the directors chairman of the meeting,

and, also, a suitable person for secretary, and proceed to a vote of those present, in person or by proxy; and if votes representing a majority of all the stock of the company shall be given in favor of availing itself of the provisions of this act, the said officers shall make a certificate of the proceedings, showing a compliance therewith, duly acknowledged, and stating:

1. The name of the corporation.
2. The object for which it is formed, including the nature and locality of its business.
3. The amount and description of the capital stock.
4. The number of shares of which such capital stock consists.
5. The location of the principal business office.
6. The duration of the corporation, which, however, shall not exceed fifty years.
7. The names of the directors for the ensuing year; which certificate, with a copy of the by-laws of such corporation, shall be filed in the office of the secretary of state, whereupon the secretary of state shall issue to said directors a certificate setting forth that said corporation is fully reorganized in accordance with this act. Such certificate of the secretary of state shall include a copy of the certificate of the proceedings (not including the by-laws), held, as hereinbefore set forth, the date and place of the stockholders' meeting, the names of the directors elected, and a statement that all the provisions of this act have been duly observed in the reorganization of such corporation. A copy of such certificate shall, within ten days from the issuing thereof by the secretary of state, be filed in the office of the clerk of the county in which the principal business office of such corporation is situated. Such certificate shall be recorded at length in a book to be kept in the office of the secretary of state. For the issuing of this certificate of reorganization the secretary of state shall receive the same fee as is provided in section seven of chapter six hundred and eleven of the laws of eighteen hundred and seventy-five. From the time of such filing, such corporation shall be deemed to be a corporation organized under this act, and if originally organized or incorporated under any general law of this state, shall have and exercise all such rights and franchises as it has heretofore had and exercised under the laws pursuant to which it was originally incorporated. But such change or proceedings shall not in any way affect, change or diminish the existing liabilities of the corporation so availing itself of the provisions of this act. [Thus amended by L. 1885, ch. 540, superseding L. 1880, ch. 187, and L. 1881, ch. 551.]

23 Hun. 173; 86 N. Y., 1.

Classification of corporations. § 33. The corporations formed under this act shall be of two classes, to be known respectively, as:

1. Full liability companies.
2. Limited liability companies.

Full liability companies. § 34. In "full liability companies," all the stockholders shall be severally individually liable to the creditors of the company in which they are stockholders, for all debts and liabilities of such company, and may be joined as defendants in any action against the company. No execution shall issue against any stockholder individually, until execution has been issued against the company and been returned unsatisfied; and whenever a judgment shall be recovered against a stockholder individually, all the stockholders shall contribute a proportionate share of the amount paid by such stockholder on such judgment, proportionate to the number of shares of stock owned by each of such stockholders, and such stockholder shall have a right of action against the other stockholders in such corporation jointly or severally, to recover from them and each of them, the proper portion due by them and each of them of the amount so paid on such judgment.

Limited liability companies. § 35. In "limited liability companies," the name of the company shall in every case have as its last word, the word "limited," and every such corporation shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position in letters easily legible, and shall have its

full name stated in legible characters in all notices, advertisements, and other official publications of such company, and in all its bills of exchange, promissory notes, checks, orders for money, bills of lading, invoices, receipts, letters, and other writings, used in the transaction of the business of the corporation.

Omission of word "limited." § 36. Every omission of the word "limited" in the use of the name of such company shall render each and every officer or director in such company personally liable for any indebtedness, damage or liability incurred during such omission. If any limited liability company under this act does not paint or affix, and keep painted or affixed its name, in the manner above set forth, it shall be liable to a penalty of not exceeding twenty-five dollars for such omission, for every day during which such name is not so kept painted or affixed; and every director or officer of such company who shall authorize or permit such omission shall be liable to a like penalty; and if any director or officer of such company, or any person on its behalf, shall use or authorize the use of any seal purporting to be a seal of the company, on which its name is not so engraved, as aforesaid, or shall use or authorize the issue of any notice, advertisement, or other official publication of such company, or shall sign or authorize to be signed, on behalf of such company, any bill of exchange, promissory note, indorsement, check, order for money or goods, invoice, bill, receipt, letter of credit or other writing of the company wherein its name is not mentioned, as aforesaid, he shall be liable to a penalty of one hundred dollars. The penalties in this section provided shall be sued for in the name of the people of the state of New York by the district-attorney of the county in which the principal office of such corporation is located, and the amounts recovered shall be paid over to the proper authorities for the support of the poor of such county.

Liability of stockholder in limited company; definition of "stockholder"; execution; capital stock. § 37. In limited liability companies, all the stockholders shall be severally individually liable to the creditors of the company in which they are stockholders, to an amount equal to the amount of stock held by them, respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company has been paid in, and a certificate thereof has been made and recorded as hereinafter prescribed. The term stockholder as used herein shall apply, not only to such persons as appear by the books of the corporation or association to be such, but also to every equitable owner of stock, although the same may appear on such books in the name of another person, and also to every person who shall have advanced the instalments or purchase-money of any stock in the name of any person under twenty-one years of age, and while such person remains a minor, to the extent of such advance; and also to every guardian or other trustee who shall voluntarily invest any trust funds in such stock; and no trust funds in the hands of such guardian or trustee shall be in any way liable under the provisions of this act by reason of any such investment, nor shall the person for whose benefit any such investment may be made be responsible in respect to such stock until thirty days after the time when such persons respectively become competent and able to control and dispose of the same; but the guardian or other trustee making such investment as aforesaid shall continue responsible as a stockholder until such responsibility devolves upon the person beneficially interested therein; and in respect to stock held by a guardian or other trustee under a transfer of the same by a third person, or under positive directions by a third person for such investment, the person making such transfer or giving such directions, and his executors and administrators shall, for the purposes of this act, be deemed a stockholder; and the estate of such person, if he be deceased, shall be responsible for the debts and liabilities chargeable on such stock, according to the provisions of this act. No execution shall issue against any stockholder individually, until execution has been issued against the corporation and returned unsatisfied; and whenever a judgment shall be recovered against a stockholder individually, all the stockholders shall contribute a proportionate share of the amount paid by such stockholder on such judgment proportioned to the number of shares of stock owned by each of such stockholders, and

such stockholder shall have a right of action against the other stockholders in such corporation, jointly or severally, to recover from them, and each of them, the proportion due by them and each of them of the amount so paid on such judgment. The capital stock of every such limited liability company shall be paid in, one-half thereof within one year, and the other half thereof within two years from the incorporation of said company, or such corporation shall be dissolved. The directors of every such company, within thirty days after the payment of the last instalment of the capital stock, shall make a certificate stating the amount of the capital so paid in, which certificate shall be signed and sworn to by the president and a majority of the directors; and they shall, within the said thirty days, record the same in the office of the secretary of state, and of the county in which the principal business office of such corporation is situated.

16 J. & S., 127; 19 Abb. N. C., 79, 84.

Dissolution not to impair liability. § 38. The dissolution for any cause whatever, of any corporation created as aforesaid, shall not take away or impair any remedy given against such corporation, its stockholders or officers, for any liabilities incurred previous to its dissolution.

Extension of company's business; new certificate. § 39. The directors of any manufacturing corporation organized under this act, who may desire within one year from the date of the original certificate of such manufacturing corporation to extend the business of such corporation beyond that mentioned in said original certificate, providing that the proposed extension of said business shall be of the same general character of that stated in, and which might have been properly included in said original certificate, are hereby authorized to make and file an amended certificate of incorporation to conform to this act; and upon the making and filing of such amended certificate, the said corporation shall be deemed and taken to be a manufacturing corporation for all purposes stated in said amended certificate from the time of filing said original certificate. [*This section added by L. 1888, ch. 513.*]

L. 1878, Chap. 334 — An act supplemental to chapter six hundred and eleven of the laws of eighteen hundred and seventy-five, entitled "An act to provide for the organization and regulation of certain business corporations."

Patrons of Husbandry; Sovereigns of Industry. SECTION 1. It shall be lawful for any corporation formed under chapter six hundred and eleven, laws of eighteen hundred and seventy-five, by either Patrons of Husbandry or Sovereigns of Industry, or jointly by both, to fix in their by-laws or constitution the following provisions, namely:

First. The amount of each share, which shall not be less than five dollars.

Second. The number of shares that shall be held by each director, which shall not be less than one full share.

Third. The basis of voting at all meetings of associations or directors thereof, giving at least one vote to each member having paid for one full share.

L. 1884, Chap. 397 — An act supplementary to chapter six hundred and eleven of the laws of eighteen hundred and seventy-five, entitled "An act to provide for the organization and regulation of certain business corporations."

Company may increase amount of shares of stock; proviso. SECTION 1. Any company formed under the act entitled "An act to provide for the organization and regulation of certain business corporations," passed June twenty-first, eighteen hundred and seventy-five, may increase the amount of shares of which its capital stock consists, provided the capital stock of such company shall not thereby be increased or diminished, and provided the shares shall not be less nor more than the amounts fixed by said act.

Vote of stockholders representing two-thirds of stock necessary. § 2. Such increase shall be made by a vote of the stockholders in favor thereof, representing two-thirds of the capital stock, at any meeting of the stockholders called in the manner prescribed in the act hereby amended, and by executing and acknowledging

an amended certificate specifying the number of shares of which the said capital stock of said company shall thereafter consist, and the par value of each share, and in other respects conforming to the original certificate, which amended certificate shall be signed by the president and two-thirds of the directors of the company, and shall be filed in the office of the secretary of state, and in the clerk's office of the county where the original certificate was filed.

New certificate of stock. § 3. Each stockholder shall be entitled to a certificate for such a number of shares of said capital stock after the whole number has been increased as aforesaid, as shall at their par value be equal to the par value of the shares therefor held by him in such company, on surrendering the certificates for said shares so held by him to be cancelled; provided that such increase shall not so divide the shares as to give the fractional part of a share to any stockholder.

L. 1885, Chap. 535 — An act to enable "Full liability companies" to reorganize as "Limited liability companies."

Full liability companies may become limited liability companies. SECTION 1. Any corporation now or heretofore or hereafter to be organized as a corporation doing business as and belonging to a class known as a "Full liability company," under an act entitled "An act to provide for the reorganization and regulation of certain business corporations," passed June twenty-one, eighteen hundred and seventy-five, may become a corporation belonging to a class known as "Limited liability companies," with all the rights, privileges and duties, and subject to all the regulations and liabilities pertaining to the same, together with the privilege and right of retaining and continuing the corporate name, with the word "limited" as its last word, in such cases, and in manner and form as stated in this act.

Proceedings to be taken for that purpose. § 2. Any such full liability company which at the time of availing itself of the privileges of this act, whose debts, liabilities or other obligations at such time shall not be greater than the amount of the capital stock of such company actually paid and unimpaired, may become a limited liability company, as stated in section one of this act, by complying with the following provisions: The directors of such corporation shall publish a notice, signed by at least a majority of them, in a newspaper published in the county in which the principal business office thereof is situated, for at least three successive weeks, once each week, and to deposit a written or printed copy thereof in the post-office, postage prepaid, addressed to each stockholder at his last known place of residence, at least two weeks previous to the day fixed upon for holding such meeting, specifying the object of the meeting, and the time and place, when and where such meeting shall be held. At the time and place specified in the notice, the stockholders shall organize by choosing one of the directors chairman of the meeting, and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy; and if votes representing a majority of all the stock of the company shall be given in favor of availing itself of the provisions of this act, the said chairman and secretary, with two other directors, shall make a certificate of the proceedings, showing a compliance with this act, duly acknowledged and stating:

1. The name of the corporation.
2. The original object for which it was formed.
3. The amount and description of the capital stock, and in how many shares the same is divided.
4. The location of the principal business office.
5. The duration of the corporation, which, however, shall not exceed fifty years.
6. The names of the directors for the ensuing year, which certificate, with a copy of the by-laws of such corporation, shall be filed in the office of the secretary of state, and of the clerk of the county in which the principal business office of such corporation is situated. From the time of such filing such corporation shall be deemed to be a limited liability corporation, as if originally organized as such, and shall have and exercise all such rights and franchises as it has heretofore had and exercised, and any stockholder or officer thereof shall not be subject

to any greater liability than if such corporation had been originally organized as a limited liability company.

When capital stock to be paid in. § 3. It is further provided, that in case the capital stock of any such corporation availing itself of the privileges of this act shall not be paid up in full at such time, that in that case the time for the payment of such capital stock shall begin to run from the time of such new reorganization, and the time and manner in which the same shall be paid shall be the same as if such corporation had been originally organized at such time as a limited liability company.

L. 1886, Chap. 586—An act supplemental to chapter six hundred and eleven of the laws of eighteen hundred and seventy-five, entitled "An act to provide for the organization and regulation of certain business corporations."

Number of directors in corporations for opera, etc.; how increased. SECTION 1. It shall be lawful for any corporation heretofore formed under chapter six hundred and eleven, laws of eighteen hundred and seventy-five, for the purpose of establishing a national opera and of promoting a higher musical education in the United States, to have any number of directors, not less than five, and the existing number thereof may be increased by a vote of a majority in interest of the owners of the stock issued by said corporation, present in person, or by attorney duly authorized at a meeting of the stockholders of such corporation held pursuant to a notice, specifying the purpose of such meeting and given to each stockholder, as is prescribed in said act, and a statement of the change of the number of directors so made shall be signed, verified and filed as provided for in said act. Corporations hereafter formed under said act, for the aforesaid purpose, may have any number of directors not less than five, as the by-laws may provide.

Quorum. § 2. The number of directors necessary to constitute a quorum, in a corporation organized for such a purpose as aforesaid, shall be fixed by the by-laws.

L. 1886, Chap. 579—An act to extend the time for the payment of the capital stock of corporations organized since May fifteenth, eighteen hundred and seventy-eight, as limited liability companies under an act entitled "An act to provide for the organization and regulation of certain business corporations," passed June twenty-first, eighteen hundred and seventy-five, and for taking proceedings to reduce their capital stock.

Time extended to companies named in title. SECTION 1. The capital stock of any corporation organized since May fifteenth, eighteen hundred and seventy-eight, as a limited liability company, under an act entitled "An act to provide for the organization and regulation of certain business corporations," passed June twenty-first, eighteen hundred and seventy-five, may be paid in within six months from and after the passage of this act, or may be reduced by proceedings authorized by law, to be taken within such time.

Not to affect rights of creditors. § 2. Nothing in this act contained shall be construed in any wise to relieve any such corporation, or the directors or stockholders thereof, from liability to creditors for debts contracted before the passage of this act by reason of any failure to pay in its capital, or any part thereof, within the time prescribed for the making of such payments by the said act, or to make and file any certificate of such payment.

L. 1888, Chap. 447—An act to extend the time for the payment of the capital stock of corporations organized since May first, eighteen hundred and eighty-four, as limited liability companies, under chapter six hundred and eleven of the laws of eighteen hundred and seventy-five, entitled "An act to provide for the organization and regulation of certain business corporations," and for taking proceedings to pay up or to reduce their capital stock.

Time extended to companies named in title. SECTION 1. The capital stock of any corporation organized since May first, eighteen hundred and eighty-four, as a limited liability company under chapter six hundred and eleven of the laws of

eighteen hundred and seventy-five, entitled "An act to provide for the organization and regulation of certain business corporations," passed June twenty-first, eighteen hundred and seventy-five, may be paid in within one year from and after the passage of this act, or may be reduced by proceedings authorized by law, to be taken within such time.

Not to affect rights of creditors. § 2. Nothing in this act contained shall be construed in any wise to relieve any such corporation, or directors or stockholders thereof, from liability to creditors for debts contracted before the passage of this act by reason of any failure to pay in its capital, or any part thereof, within the time prescribed for the making of such payments by the said act, or to make and file any certificate of such payment.

TITLE 4².*Of certain quasi or partial Corporations.*

ARTICLE FIRST.

JOINT-STOCK ASSOCIATIONS.

[See, also, L. 1850, ch. 172, § 2, *ante*, p. 1732.]**L. 1854, Chap. 245**—An act to amend, and in addition to the several acts relative to joint-stock associations.

No dissolution by death of shareholder. SECTION 1. Whenever in pursuance of its articles of association the property of any joint-stock association is represented by shares of stock, it may be lawful for said associations to provide by their articles of association that the death of any stockholder or the assignment of his stock shall not work a dissolution of the association, but it shall continue as before, nor shall such company be dissolved except by judgment of a court for fraud in its management or other good cause to such court shown, or in pursuance of its articles of association.

16 Abb. Pr. R., 150; 102 N. Y., 355.

Number of managers. § 2. Said association may also, by said articles of association, provide that the shareholders may devolve upon any three or more of the partners the sole management of their business.

Limitation of act. § 3. This act shall in no court be construed to give said associations any rights and privileges as corporations.

L. 1867, Chap. 289—An act to authorize joint-stock companies and associations to purchase, hold and convey real estate.

Purchase of real estate when allowed. SECTION 1. It shall be lawful for any joint-stock company or association to purchase, hold and convey real estate for the following purposes:

1. Such as shall be necessary for its immediate accommodation in the convenient transaction of its business; or,

2. Such as shall be mortgaged to it in good faith, by way of security for loans made by or moneys due to such joint-stock company or association; or,

3. Such as it shall purchase at sales under judgments, decrees or mortgages held by such joint-stock company or association.

The said joint-stock company or association shall not purchase, hold or convey real estate in any other case or for any other purpose; and all conveyances of such real estate shall be made to the president of such joint-stock company or association, as such president, and who, and his successors, from time to time, may sell, assign and convey the same, free from any claim thereon against any of the shareholders, or any person claiming under them, or any or either of them.

32 Hun, 317.

L. 1867, Chap. 937—An act to enable companies or corporations, organized under any general law, to extend the term of their existence.

Extension of term of existence. SECTION 1. Any company or corporation heretofore formed under any general law of this state, at any time within three years of the expiration of its term of existence, may extend the term of existence of such company or corporation beyond the time mentioned in the original articles of association or certificate of incorporation, by the consent of the stockholders owning two-thirds in amount of the capital stock of such company or corporation, in and by a certificate to be signed by such stockholders, and acknowledged or proved, so as to enable them to be recorded, which certificate shall be filed in the office of the secretary of state, and in the office of the clerk of the county in which its original certificate or articles of association, if any, are filed or recorded; and the said secretary of state and the clerk of such county shall, upon such filing, record the same in the books kept in their respective offices for the record of articles of association, and make a memorandum of such record in the margin of the original articles of association, in such book, and thereupon the time of existence of such company shall be extended, as designated in such certificate, for a term not exceeding the term for which said company or corporation was organized in the first instance.

86 N. Y., 1.

L. 1868, Chap. 290—An act in relation to joint-stock companies and associations.

When the capital may be reduced. SECTION 1. Whenever the amount of capital stock issued by any joint-stock company or association shall be, at the par value thereof, in excess of the actual amount of capital called in by such company or association for the transaction of its business, it shall be lawful for the trustees, directors or managing board of such joint-stock company or association, upon the consent in writing of three-fourths of the trustees, directors or managing board thereof, to reduce the capital stock thereof to such an amount as may be determined upon by such trustees, directors or managing board; provided, that the amount of such capital stock shall not be reduced, at the par value thereof, below the amount of capital stock which shall be called in by such joint-stock company or association; and provided further, that no such reduction of capital stock shall be made when the unexpended capital in the treasury of such joint-stock company or association shall not be equal to the outstanding liabilities thereof; it being the intention hereby to authorize any such company or association to reduce its capital stock to an amount not less, at its par value, than the capital called in by such company or association for the transaction of its business.

L. 1881, Chap. 599—An act in relation to joint-stock companies and corporations having a capital of less than one hundred thousand dollars.

May reduce number of trustees; proviso. SECTION 1. Any joint-stock company or corporation, with a capital of less than one hundred thousand dollars, organized under a special act of the legislature, having more than seven trustees, may reduce the number of its trustees to not less than seven, to be elected annually at the time appointed in its articles of incorporation; provided that a majority of the stockholders of such joint-stock company or corporation shall so determine, at a meeting to be held at the usual place of meeting of the trustees of such joint-stock company or corporation, on thirty days' previous notice, in writing, to each stockholder of record; such notice shall be signed by not less than five stockholders, and shall be delivered in person or deposited in the post-office directed to each stockholder at his last known address, and upon the election of the trustees as herein provided, the term of office of the trustees in office at the time of such election shall cease and determine.

L. 1885, Chap. 505—An act to provide for record evidence of the names and membership of joint-stock associations, and for the mode of proof of the membership thereof.

Certificate to be filed; contents. SECTION 1. Every joint-stock association transacting business within this state shall, within sixty days after this act shall take effect, file with the secretary of state, and also with the clerk of the county where the principal business of such association is carried on, a certificate, in writing, signed and sworn to by the president and treasurer of such association, stating the name of such association, the date of its organization, the law or statute under which it is organized and doing business, the number of associates required thereby, and whether the association comprises said number, its principal place of business, and the names and places of residence of its officers.

Annually in January like certificate to be filed. § 2. Every such association shall also annually, during the month of January in each year hereafter, file a like certificate with the secretary of state, and with the clerk of the county where the principal business of such association is carried on, stating all the facts required to be stated by the certificate referred to in the preceding section.

To be recorded; fees. § 3. The several certificates so filed shall be recorded by the secretary of state, and by the said county clerk, respectively, in a book or books to be provided for that purpose. The fees for recording such certificates shall be the same as are prescribed by law for the recording of deeds and other conveyances, and shall be paid by the association filing the same.

Evidence. § 4. The certificates so filed, and the records thereof, and copies of such certificates or records, certified by the officers with whom the same are filed, shall be presumptive evidence of the truth of all the facts therein stated against all the persons named in said certificates as officers or members thereof.

Officers, etc., not privileged from testifying. § 5. No officer or member of any joint-stock association shall be privileged from testifying in any suit, action or proceeding against said association, or against any of the members thereof, in respect to the existence of said association, or the members composing the same, or of any facts relating to the organization thereof.

Penalty for failure to comply with this act. § 6. The officers of any joint-stock association, who shall fail to comply with the provisions of this act, shall be jointly and severally liable to a fixed penalty of fifty dollars for every day during which the failure to comply with the provisions of sections one and two of this act shall continue, to be recovered in a suit brought in the name of the people of the state of New York by the attorney-general. All penalties that have accrued at the time of the commencement of such action may be recovered therein, or a separate action may be maintained for one or more of such penalties.

TITLE I.

CHAPTER XIX.

OF THE COMPUTATION OF TIME, OF WEIGHTS AND MEASURES, AND THE MONEY OF ACCOUNT.

TITLE I.—OF THE COMPUTATION OF TIME.

TITLE II.—OF WEIGHTS AND MEASURES.

TITLE III.—OF THE MONEY OF ACCOUNT.

TITLE I.

Of the Computation of Time.

- Smo.** 1. Time to continue to be computed according to Gregorian or new style.
 2. What to be deemed leap years; such years to consist of 366 days.
 3. Year, etc., defined; added day of leap year how to be computed.
 4. Term "month" to mean calendar month, unless otherwise expressed.

New style
to be con-
tinued.

SECTION 1. Time shall continue to be computed in this state, according to the Gregorian or new style; and the first day of January, in every year, which has happened, according to such style, since the year one thousand seven hundred and fifty-two, and which shall hereafter happen, shall be reckoned to be the first day of the year.

Leap
years.

[606]

§ 2. For the purpose of preserving the method of reckoning and computing the days of the year, in the same regular course, as near as may be, in all future times, the several years one thousand nine hundred, two thousand one hundred, two thousand two hundred, two thousand three hundred, or any other future hundredth year, of which the year two thousand shall be the first, except only every fourth hundredth year, shall not be taken to be bissextile or leap years, but shall be taken to be common years, consisting of three hundred and sixty-five days; and the years two thousand, two thousand four hundred, two thousand eight hundred, and every other fourth hundredth year, from the year two thousand inclusive, and also every fourth year, except as first above mentioned, which, by usage in this state, is considered to be a bissextile or leap year, shall be taken to be bissextile or leap years, consisting of three hundred and sixty-six days.

Year, &c.,
defined.

§ 3. Whenever the term "year," or "years," is or shall be used in any statute, deed, verbal or written contract, or any public or private instrument whatever, the year intended shall be taken to consist of three hundred and sixty-five days; a half year of one hundred and eighty-two days; and a quarter of a year of ninety-one days; and the added day of a leap year, and the day immediately preceding, if they shall occur in any period so to be computed, shall be reckoned together as one day.

Added day
of leap
year.Construc-
tion of
term

§ 4. Whenever the term "month" or "months," is or shall be used in any statute, act, deed, verbal or written contract, or any public or

private instrument whatever, it shall be construed to mean a calendar, and not a lunar month; unless otherwise expressed. TITLE 1.
"month."
28 N. Y.,
444.

[Modified, as to the computation of interest, by R. S., part 2, chapter 4, title 3, § 9.]

§ 5. The standard time throughout this state shall be that of the seventy-fifth meridian of longitude, west from Greenwich, by which all courts and public offices, and all legal or official proceedings shall be hereafter regulated. Whenever, by the laws of this state, or by any law, rule, order or process of any authority, created by or pursuant to the laws of this state, any act is required to be performed, at or within any prescribed time, such act shall be performed according to the time at the seventy-fifth meridian of longitude, west from Greenwich. [This section added by L. 1884, ch. 14.] Standard
time.

TITLE II.

Of Weights and Measures.

TITLE 2.
[608-611]

[Repealed by "An act in relation to weights and measures," passed April 11, 1851; L. 1851, ch. 134, § 35.]

Acts relating to Weights and Measures.

L. 1829, Chap. 297 — An act concerning standard measures of capacity.*

Standard of measures of capacity. SECTION 1. The unit or standard of measures of capacity, as well for liquids as for dry commodities not measured by heaped measures, from which all other measures of capacity shall be derived and ascertained, shall be the gallon.

Two kinds of gallons. § 2. There shall continue to be two kinds of gallons, one for the measure of all liquids, and one for the measure of all other substances not measured by heaped measures; the first to be denominated the gallon for liquid measures, and the second to be denominated the gallon for dry measures.

Liquors. § 3. The gallon for liquids shall be a vessel of such capacity as to contain at the mean pressure of the atmosphere, at the level of the sea, eight pounds of distilled water, at its maximum density.

Dry measure. § 4. The gallon for dry measure shall be a vessel of such capacity as to contain, at the mean pressure of the atmosphere, at the level of the sea, ten pounds of distilled water, at its maximum density.

Standard to be made of brass. § 5. Such standard gallons shall be made of brass; and in case of loss, shall be restored, according to the proportions above mentioned, under the direction of the state sealer of weights and measures.

Division by the No. 2. § 6. All other measures of capacity for liquids shall be derived from the liquid gallon by continual division by the number two, so as to constitute half gallons, quarts, pints, half pints and gills.

Multiplication by the No. 2. § 7. All other measures of capacity, for substances not being liquids, shall be derived from the dry gallon by continual multiplication, by the number two in the ascending scale, so as to constitute pecks, half bushels and bushels; and by continual division by the same number in the descending scale, so as to constitute half gallons, quarts, pints, half pints and gills.

[Section 8 is omitted as temporary.]

* This act was passed subsequently to title 2 of the R. S. (which was passed Dec. 3, 1827), and was intended as an amendment thereof. Most, and probably the whole of it, was superseded by L. 1851, ch. 134, but as some doubts may arise as to how much of it is in force, it is inserted here.

L. 1831, Chap. 315—An act providing for the appointment of an assistant state sealer of weights and measures.

Assistant state sealer. SECTION 1. There shall be appointed by the senate, on the nomination of the governor, an assistant state sealer of weights and measures, to reside in the city of Albany, who shall be a practical mechanic, skilled in the manufacturing and regulating of weights and measures, and who shall hold his office for the term of two years, and until another shall be appointed in his stead.

[Section 2 amends the R. S.]

L. 1835, Chap. 282—An act to create and regulate a standard for measuring bran and shorts.

Measure for bran. SECTION 1. The standard measure or capacity for bran and shorts shall be forty quarts to the bushel. The measure used for measuring the said commodities shall be made round with a plain or even bottom, and shall be thirteen inches and a half in diameter in the clear at the top, and fifteen inches and a half in diameter in the clear at the bottom, and of sufficient depth to contain the aforesaid quantity when stricken with a round, straight stick or roller of uniform diameter.

[See L. 1851, ch. 134, § 12.]

L. 1851, Chap. 134—An act in relation to weights and measures.

Weights and measures, description of. SECTION 1. The standard weights and measures now in charge of the secretary of state, being the same that were furnished to this state by the government of the United States, in accordance with a joint resolution of congress, approved June 14, 1836, and consisting of one standard yard measure, one set of standard weights, comprising one Troy pound, and nine Avoirdupois weights of one, two, three, four, five, ten, twenty, twenty-five and fifty pounds respectively; one set of standard Troy ounce weights, divided decimally from ten ounces to the one ten-thousandth of an ounce; one set of standard liquid capacity measures, consisting of one wine gallon of two hundred and thirty-one cubic inches, one half-gallon, one quart, one pint and one half-pint measure, and one standard half-bushel, containing one thousand and seventy-five cubic inches and twenty-one hundredths of a cubic inch, according to the inch hereby adopted as standard, shall be the standards of weight and measure throughout this state.

The unit. § 2. The unit or standard measure of length and surface from which all other measures of extension, whether they be lineal, superficial or solid, shall be derived and ascertained, shall be the standard yard designated in the first section of this act.

The yard. § 3. The yard shall be divided into three equal parts called feet, and each foot into twelve equal parts called inches; for measures of cloths and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths.

The rod. § 4. The rod, pole or perch shall contain five and a half such yards; and the mile, one thousand seven hundred and sixty such yards; the chain for measuring land, shall be twenty-two yards long, and shall be divided into one hundred equal parts called links.

The acre. § 5. The acre, for land measure, shall be measured horizontally, and contain ten square chains, and shall be equivalent in area, to a rectangle sixteen rods in length, and ten in breadth: six hundred and forty such acres being contained in a square mile.

Weights. § 6. The units or standards of weight from which all other weights shall be derived and ascertained, shall be the standard avoirdupois and Troy weights designated in section first of this act.

The pound. § 7. The avoirdupois pound which bears to the Troy pound the ratio of seven thousand to five thousand seven hundred and sixty, shall be divided into sixteen equal parts called ounces: the hundred weight shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton. The Troy ounce shall be equal to the twelfth part of the Troy pound.

The gallon. § 8. The units or standards of measure of capacity for liquids, from which all other measures of liquids shall be derived and ascertained, shall be the standard gallon and its parts, designated in the first section of this act.

The barrel. § 9. The barrel shall be equal to thirty-one and a half gallons, and two barrels shall constitute a hogshead.

Half bushel. § 10. The unit or standard measure of capacity for substances not being liquids, from which all other measures of such substances shall be derived and ascertained, shall be the standard half-bushel mentioned in section first of this act.

The peck, &c. § 11. The peck, half-peck, quarter-peck, quart and pint measures, for measuring commodities which are not liquid, shall be derived from the half-bushel, by successively dividing that measure by two.

Measures of coal, ashes, &c. § 12. The measures of capacity for coal, ashes, marl, manure, Indian corn in the ear, fruit and roots of every kind, and for all other commodities, commonly sold by heap measure, shall be the half-bushel and its multiples and subdivisions; and the measures used to measure such commodities shall be made cylindrical, with plain and even bottom, and shall be of the following diameters: from outside to outside the bushel, nineteen and a half inches; half-bushel, fifteen and a half inches; and the peck, twelve and a third inches.

[See L. 1835, ch. 282, *ante*.]

Heap Measure. § 13. All commodities sold by heap measure shall be duly heaped up in the form of a cone; the outside of the measure by which the same shall be measured to be the limit of the base of the cone, and such cone to be as high as the article will admit.

Contracts how construed. § 14. All contracts hereafter made within this state for work to be done, or for anything to be sold or delivered by weight or measure, shall be taken and construed according to the standards of weight and measure hereby adopted as the standards of this state.

Number of pounds to the bushel. § 15. Whenever wheat, rye, Indian corn, barley or oats, shall be sold by the bushel, and no special agreement shall be made by the parties as to the mode of measuring, the bushel shall consist of sixty pounds of wheat, fifty-six pounds of rye or Indian corn, forty-eight pounds of barley and thirty-two pounds of oats.

[Modified by L. 1857, ch. 560, *post*.]

Superintendent. § 16. A superintendent of weights and measures for this state, who shall be a scientific man, of sufficient learning and mechanical tact to perform the duties of his office, shall be appointed by the governor, lieutenant-governor and secretary of state, or any two of them, at a meeting called for this purpose by the secretary of state, and shall hold his office during their pleasure.

His duties. § 17. It shall be the duty of the superintendent to take charge of the standards adopted by this act as the standards of the state; to see that they are deposited in a fire-proof building belonging to the state, from which they shall in no case be removed, and to take all other necessary precautions for their safe keeping. It shall also be his duty to correct the standards of the several cities and counties, and provide them with such standards, balances and other means of adjustment, as may be necessary; and as often as once in ten years, to compare the same with those in his possession; he shall, moreover, have a general supervision of the weights and measures of the state.

[See L. 1854, ch. 326, *post*.]

His salary. § 18. The superintendent shall receive for his services a salary of three hundred dollars a year, and for the first two years, such additional sum as may be certified to as just and proper by the secretary of state, but in no case shall such allowance exceed two hundred dollars in one year.

Copies of standard weights and measures. § 19. The state superintendent of weights and measures shall procure for the state, a complete set of copies of the original standards of weights and measures adopted by this act, which shall be used for adjusting county standards, and in no case shall the original standards be used for any other purpose than the adjustment of this set of copies, and for scientific purposes; he shall also procure such apparatus and fixtures as are necessary in the comparison and adjustment of the county standards; for these purposes he is hereby authorized to expend a sum not exceeding fifteen hundred dollars, which is hereby appropriated from any money in the treasury applicable to that purpose.

County sealer. § 20. The board of supervisors of each county shall, at their annual meeting, appoint a county sealer of weights and measures, who shall hold his office during the pleasure of the board.

His duty. § 21. It shall be the duty of the county sealer to take charge of the county standards and standard balances and provide for their safe keeping; to provide the town with such standard weights and measures and standard balances as may be wanting, and to compare the town standards with those in his possession as often as once in every five years. In case any town shall fail to procure or obtain the proper standards of weights and measures for said town, or in case there be no sealer of weights and measures in said town, then in such case it shall be the duty of the county sealer, in the county where such town is situated, to act in said town, and perform the duties of a town sealer in such town, and shall be entitled to the fees as is allowed by section twenty-seven of said act; and also may perform and execute the duties of town sealer in such towns, and for such times as said towns may not have therein a qualified town sealer, or may not have the requisite standard of weights and measures therein, and shall receive for such services the same fees as are allowed to town sealers for similar services. [*Thus amended by L. 1863, ch. 77, and L. 1865, ch. 666.*]

Town sealer. § 22. A town sealer of weights and measures shall be appointed by the supervisor and justices of the peace of the town, and shall hold his office during their pleasure.

His duty. § 23. It shall be the duty of the town sealer to take charge and provide for the safe keeping of the town standards, and to see that the weights, measures and all apparatus used for determining the quantity of commodities used throughout the town, which shall be brought to him for that purpose, agree with those standards in his possession.

Copies of standards for counties. § 24. The supervisors of each county shall, at their first annual meeting after the passage of this act, provide for procuring the proper standards of weights and measures for their respective counties, and for each of the towns therein; and all expenses directly incurred in furnishing the several cities, counties and towns with standards, or in comparing and adjusting those already in their possession, shall be borne by the respective cities, counties and towns for which such expenses shall have been incurred.

[Modified by L. 1854, ch. 326, § 4, *post.*]

Devices for weights and measures. § 25. The state superintendent of weights and measures shall see that there are impressed on all the city and county standards the emblem of the United States, the letters N. Y., and such other device as he shall direct for the particular county; and the county sealers shall see that in addition to the above device there is impressed on the town standards such other device as the board of supervisors shall direct for the several towns.

Weights and measures to be marked. § 26. Whenever the several sealers of the cities, counties and towns shall compare weights and measures and find or make

them to correspond with the standards in their possession, they shall seal and mark such weights and measures with the appropriate devices.

Fees. § 27. Each sealer shall be entitled to receive for his services, at and after the following rates :

For sealing and marking every beam, ten cents ;

For sealing and marking measures of extension, at the rate of ten cents per yard, not to exceed fifty cents for any one measure ;

For sealing and marking every weight, five cents ;

For sealing and marking liquid and dry measures, ten cents for each measure. He shall also be entitled to a reasonable compensation for making weights and measures, conformed to the standards in his possession.

In case of vacancies, standards to be delivered to successors in office. § 28. Whenever the state superintendent of weights and measures shall resign, be removed from office, or remove from the city of Albany, or when any city, county, or town sealer shall resign, be removed from office, or remove from the city, county, or town in which he shall have been appointed or elected, it shall be the duty of the person so resigning, removed, or removing, to deliver to his successor in office all the standard beams, weights, and measures in his possession.

Id., in case of death. § 29. In case of the death of any such sealer of weights and measures, his representative shall in like manner deliver to his successor in office, such beams, weights, and measures.

Penalty for refusal. § 30. In case of refusal or neglect to deliver such standards, entire and complete, the successor in office may maintain an action against the person or persons so refusing or neglecting, and recover double the value of such standards as shall not have been delivered. And in every such action in which judgment shall be rendered for the plaintiff, he shall recover double costs.

Damages how disposed of. § 31. One-half of the damages recovered in every such action shall be retained by the person so recovering, and the other shall be applied to the purchase of such standards as may be required in his office.

[Section 32 repealed by L. 1886, ch. 593.]

Surveyor's testimony. § 33. No surveyor shall give evidence in any cause depending in any of the courts of the state, or before arbitrators, respecting the survey or measurements of lands which he may have made, unless such surveyor shall make oath, if required, that the chain or measure used by him was conformable to the standards which were the standards of the state, at the time such survey was made.

77 N. Y., 36.

[Sec. 34 relates to time of the act taking effect. Sec. 35 repeals R. S., part 1, ch. 19, tit. 2.]

L. 1854, Chap. 326 — An act to amend an act entitled "An act in relation to weights and measures," passed April eleventh, eighteen hundred and fifty-one.

All the counties to be supplied ; expenses, how paid. SECTION 1. That for the better enabling the state superintendent of weights and measures to carry into effect that clause of the seventeenth section of the act of April eleventh, eighteen hundred and fifty-one, entitled "An act in relation to weights and measures," which requires that the said superintendent shall provide the several counties of the state with such standards and balances as may be necessary, he is hereby authorized to contract with such manufacturers as he may select for their ability and experience, for the making and furnishing so many sets of weights and measures and such and so many balances as shall be necessary to supply those counties that are not yet provided with a proper and efficient set of standard weights and measures and balances to meet the requirements of the said act in

relation to weights and measures, as specified more particularly in the twenty-first section of the same, together with one additional set of such standards, to remain on deposit in the office of the said state superintendent, as a model whereupon to construct new standards for such counties as may be hereafter erected within this state. The said standard shall be fabricated and manufactured of such materials, denominations and fashion of workmanship as shall be directed by the said superintendent, and conformed by the manufacturers as nearly as practicable to the standard established by the United States government. The cost and expenses of the said standards shall be paid by the treasurer of the state, on the warrant of the comptroller, based upon the certificate of said superintendent, stating that the said sets of weights, measures and balances have been delivered into his possession, and have been examined and approved by him; provided as an essential condition, that the said standards are obtainable at such rates as shall be deemed just and reasonable by the superintendent.

Examination and distribution. § 2. On receiving the aforesaid weights, measures and balances, the state superintendent of weights and measures shall forthwith proceed to examine the balances and compare each set of weights and measures with and conform the same as exactly as possible to the state standard weights and measures in his possession; and shall thereupon forward one set of such standard weights and measures, together with the requisite balances, to the county clerk or county sealer of each county in the state not already supplied with the same, for the use of the county sealer of such county, as specified in the twenty-first section of the act to which this is an addition; the cost of transportation to be defrayed out of such county treasury respectively, and the fees and expenses of the state superintendent for verification and sealing to be paid by the county treasurer to the said superintendent on his order.

Prime cost to be charged to the county. § 3. In order to indemnify the state treasurer for the expenses incurred under the first section of this act, the prime cost of each set of standards shall be charged to the county to which the same is assigned, and shall remain to the debit of said county until fully repaid, but without interest for one year after the date of the delivery of such set of standards; and the board of supervisors of every such county, at their first annual meeting after the reception of such set of standards, shall provide the means to meet the expenses and charges incident thereto, and shall authorize the county treasurer to pay into the treasury of the state the prime cost of such standards, together with the interest accruing upon the same from one year after the reception of such standards.

Prior act modified. § 4. So much of the twenty-fourth section of the act entitled "An act in relation to weights and measures," passed April eleventh, eighteen hundred and fifty-one, as requires the supervisors of each county to provide for procuring a set of county standards, is modified by the preceding third section of this act, so far as respects the several counties that have not acted under the said twenty-fourth section; but the remainder of the section shall remain in full force, to the effect that the supervisors of each county shall, soon after the passage of this act, provide for procuring the proper standard weights, measures and balances for each of the towns in said county, at the expense of such towns respectively.

L. 1857, Chap. 560—An act to amend section 36 of title 2 of chapter 19 of part 1 of the Revised Statutes, relating to weights and measures, as amended by chapter three hundred and seventy-four of the laws of eighteen hundred and thirty-six.*

Amendment. SECTION 1. Section thirty-six of title two of chapter nineteen of part first of the Revised Statutes as amended, by chapter three hundred and sev-

* The title of which the section amended forms a part was repealed by L. 1851, ch. 134; so that this act is in effect an amendment of § 15 of the act of 1837. The error was caused by incorporating the act of 1851 into the 4th ed. of the R. S., as title 2 of ch. 19.

ent-four of the laws of eighteen hundred and thirty-six, is hereby amended so as to read as follows:

Number of pounds to the bushel. § 15. Whenever wheat, rye, Indian corn, buckwheat, barley, oats, beans, peas, clover seed, timothy seed, flax seed, or potatoes, shall be sold by the bushel, and no special agreement shall be made by the parties as to the mode of measuring, the bushel shall consist of sixty-two pounds of beans, sixty pounds of wheat, peas, clover seed, or potatoes, fifty-eight pounds of Indian corn, fifty-six pounds of rye, fifty-five pounds of flax seed, forty-eight pounds of buckwheat or barley, forty-four pounds of timothy seed, and thirty-two pounds of oats.

[As to the appointment of inspectors and sealers of weights and measures in the city of New York, see The New York City Consolidation Act, L. 1882, ch. 410, § 106; of sealers of weights and measures in Brooklyn, see L. 1885, ch. 258.]

TITLE III.

TITLE 3.

Of the Money of Account.

- SEC. 1. Public accounts to be kept in money of account of United States.
 2. Judgments, etc., to be in dollars and cents; omission of fractions not erroneous.

SECTION 1. All accounts and other computations of money in the treasury and other public offices, whether state or local, and all accounts arising from proceedings in courts of justice, shall be kept and made out, in the money of account of the United States, that is to say: in dollars or units, dimes or tenths, cents or hundredths, mills or thousandths; a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, and a mill the thousandth part of a dollar.

Currency
of U. S.
adopted.
[612]

[1 R. L., 168.]

§ 2. In all judgments or decrees rendered by any court of justice, for any debt, damages or costs, and in all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting lesser fractions; and no judgment or other proceeding shall be considered erroneous for such omissions.

Sums in
judgment
and de-
crees.

[The same.]

TITLE VIII.

TITLE 8.*Of the Prevention and Punishment of Immorality and Disorderly Practices.*

ART. 1.—Of jugglers and the exhibition of shows, etc.

ART. 2.—Of disorderly practices on public occasions and holidays, and in taverns, vessels and canal boats.

ART. 3.—Of betting and gaming.

ART. 4.—Of raffling and lotteries.

ART. 5.—Of the racing of animals.

ART. 6.—Of profane cursing and swearing.

ART. 7.—Of the disturbance of religious meetings

ART. 8.—Of the observance of Sunday.

ART. 9.—General provisions to enforce the prohibitions of the three last articles.

[000]

TITLE 8.**ARTICLE FIRST.****OF JUGGLERS, AND THE EXHIBITION OF SHOWS, ETC.**

- SEC. 1. Puppet-shows, etc., not to be performed or allowed; penalty.
 2. Same penalty for exhibiting paintings, animals, etc., without license.

Penalty for performing puppet shows, &c., or allowing them to be performed. 13 Barb., 628; 13 Wend., 384; 56 N. Y., 424.

SECTION 1. No person shall exhibit or perform for gain or profit, any puppet-show, any wire or rope-dance, or any other idle shows, acts or feats which common showmen, mountebanks or jugglers usually practice or perform; and no owner or occupant of any house, out-house, yard, field, shed or other place, shall furnish or allow the same to be used for the accommodation of such exhibition or performance. Whoever shall offend against either of these provisions, shall forfeit twenty-five dollars for each offence, to be recovered by and in the name of the overseers of the poor of the town where the offence shall be committed.

[L. 1819, 240, §§ 1 and 2.]

Id. for exhibiting paintings, animals, &c., without license.

§ 2. The penalties in the preceding section shall also apply to and be recovered of any person who shall exhibit for gain or profit any painting, any animal or other natural or artificial curiosity, or any other thing not prohibited in the foregoing section, in any town, without having first obtained permission in writing for that purpose, signed by two justices of the peace of the town, in which license the nature of such exhibition shall be described, and for the granting of which no fee or reward shall be taken.

[The same.]

L. 1880, Chap. 393—An act for the regulation of international exhibitions held under the supervision and auspices of the government of the United States, within the state of New York, and preventing seizure of articles and goods deposited on exhibition thereat.

Preventing seizure of articles and goods deposited. SECTION 1. No process of attachment, execution, sequestration, replevin, distress or any kind of seizure shall be served or levied upon articles, goods, wares, merchandise or property of any description while the same is *en route* to or from, or while on exhibition or deposited by exhibitors at any international exhibition held under the auspices or supervision of the United States, within any city or county of this state, nor shall such property be subject to attachment, seizure, levy or sale, for any cause whatever, in the hands of the authorities of such exhibition or otherwise.

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ARTICLE SECOND.**OF DISORDERLY PRACTICES ON PUBLIC OCCASIONS AND HOLIDAYS, AND IN TAVERNS, VESSELS AND CANAL BOATS.**

- SEC. 3. Penalty for discharging fire-arms, etc., on certain days, without military order.
 4. [Repealed.]
 5. Public officers to destroy such tables.
 6. Gaming, etc., in taverns and certain vessels and packets, prohibited.
 7. Penalties on tavern-keepers, etc., and how collected.

Discharge of fire-arms, etc..

§ 3. No person shall fire or discharge any gun, pistol, rocket, squib, cracker, or other fire-work, within a quarter of a mile of any

building, on the twenty-fifth day of December, on the last day of December, on the first day of January, or on the twenty-second day of February, in any year; nor on the fourth day of July, or such other day as shall at the time be celebrated as the anniversary of American independence, without the order of some officer of the militia, while in the course of military exercises; every person offending against these provisions, shall forfeit the sum of five dollars, to be recovered by any person who will prosecute in the name of the overseers of the poor, with their consent and under their direction, for the use of the poor.

[1 R. L., 49.]

[Section 4 repealed by L. 1886, ch. 593.]

§ 5. It shall be the duty of all sheriffs and of all other executive, judicial or ministerial officers concerned in the administration of justice, to break, burn or otherwise destroy, every such table, box and machine, so exposed or possessed contrary to the provisions of the last foregoing section.

[The same.]

§ 6. There shall not be allowed or suffered any cock-fighting, playing with cards or dice, or any kind of gaming by lot or chance, within any house kept as a public inn or tavern, or in any grocery, or other place where spirituous liquors shall be licensed to be sold, nor shall there be any playing with cards or dice for gain or money, or any kind of gaming by lot or chance, on board any vessel used for the transportation of passengers, or on board any packet or other boat employed in the conveyance of passengers on any canal; nor shall any billiard table or other gaming table, be kept on board such vessel or boat, or within such house or place, or in any out-house, yard, or garden belonging to such house or place.

[R. L., 178, § 8; L. 1816, 243, § 2.]

§ 7. The master of any vessel or boat, and the keeper of any inn, tavern, grocery or other place where spirituous liquors are licensed to be sold, who shall offend against either of the provisions of the last section, shall forfeit ten dollars for each offence, to be recovered by and in the name of the overseers of the poor of the town where any such offence shall be committed by the keeper of an inn, tavern, grocery or other place before mentioned, and by and in the name of the overseers of the poor of any town where the offence shall be committed by any master of a vessel or boat.

ARTICLE THIRD.

OF BETTING AND GAMING.

[662]

Sec. 8. All wagers unlawful; all contracts on account of wagers, void.

9. Money and property wagered, may be recovered of stakeholder or winner.

10. Two last sections not to extend to certain insurances and contracts.

11-13. [Repealed.]

14. Persons losing at any sitting \$25, may recover it back.

15. If not sued for by losers, may be recovered by overseers of the poor.

16. Securities for money lost at gaming, etc., void.

17. If such securities affect real estate, to enure to heir of grantor, etc.

18, 19. [Repealed.]

ART. 3.

on certain days, prohibited.

[661]

To be destroyed.

Gaming, etc., in taverns and vessels, prohibited. 18 Johns. R., 84.

Penalties.

How collected.

TITLES. **Sec. 20.** Answer not to be testimony against such persons.
21. When and how witnesses may be discharged from penalties of this title.

All wagers unlawful, &c.
 19 N. Y., 27;
 1 N. Y., 395;
 22 Barb., 38; 6 Barb., 686; 4 Barb., 529;
 C., 489; 1 N. Y., 89; 4
 5 Denio, 335; 3 Denio, 105, 342; 1 Denio, 173; 8 Cow., 141; 5 Wend., 250; 3 Sandf. S. How. Pr. R., 85; 2 E. D. Smith, 291; 18 Abb., 135; 14 Abb., 379, 405; 56 N. Y., 234; 49 Robt., 424; 19 Abb., 375; 1 Abb. Pr. R., N. S., 445; 5 Robt., 97; 40 Hun, 61.

[1 R. L., 223, § 5.]

Property staked may be recovered.
 2 Robt., 424; 1 Abb., N. S., 445;
 1 N. Y., 394;
 20 N. Y., 12;
 15 N. Y., 527; 22 Barb., 82;
 13 Barb., 556; 9 id., 313; 4 Barb., 529; 3 Denio, 103, 107; 1 Denio, 558; 7 Cow., 496; 10 Johns. R., 468; 15 Abb., 198; 46 How. Pr. R., 102; 4 Robt., 424; 19 J. & S., 88.

Two last sections qualified.
 22 Barb., 3; 23 Barb., 151;
 3 Denio, 105.

§ 10. The two last sections shall not be extended so as to prohibit or in any way affect any insurances made in good faith for the security or indemnity of the party insured, and which are not otherwise prohibited by law: nor to any contract on bottomry or respondentia.

[Sections 11 to 13 repealed by L. 1886, ch. 593.]

Losers of certain sums may recover them back.
 19 N. Y., 27;
 13 Johns. R., 88; 4 [663]
 Johns. R., 193; 29 How. Pr. R., 93; 15

§ 14. Every person who shall, by playing at any game, or by betting on the sides or hands of such as do play, lose at any time or sitting, the sum or value of twenty-five dollars or upwards, and shall pay or deliver the same or any part thereof, may, within three calendar months after such payment or delivery, sue for and recover the money or value of the things so lost and paid or delivered, from the winner thereof.

Abb., 198; 5 Robt., 91-97; 1 Abb. Pr. R., N. S., 446; 16 J. & S., 112; 108 N. Y., 73.

[1 R. L., 153, § 2.]

When to be collected by overseer of poor.

§ 15. In case the person losing such sum or value shall not, within the time aforesaid, in good faith and without collusion, sue for the sum or value so by him lost and paid or delivered, and prosecute such suit to effect without unreasonable delay, the overseers of the poor of the town where the offence was committed, may sue for and recover the sum or value so lost and paid, together with treble the said sum or value, from the winner thereof, for the benefit of the poor.

[The same.]

Securities for money lost at gaming void, &c.
 19 Barb., 157; 3 Denio, 343;
 1 N. Y., 392;
 108 N. Y., 73.

§ 16. All things in action, judgments, mortgages, conveyances, and every other security whatsoever, given or executed, by any person, where the whole or any part of the consideration of the same shall be for any money or other valuable thing won by playing at any game whatsoever, or won by betting on the hands or sides of such as do play at any game, or where the same shall be made for the repaying any money knowingly lent or advanced for the purpose of such gaming or betting aforesaid, or lent or advanced at the time and place of such play, to any person so gaming or betting afore-

said, or to any person who, during such play, shall play or bet, shall be utterly void, except where such securities, conveyances or mortgages shall affect any real estate, when the same shall be void as to the grantee therein, so far only as hereinafter declared.

ART. 4.

[1 R. L., 153, § 1.]

§ 17. When any securities, mortgages or other conveyances, executed for the whole or part of any consideration specified in the preceding section, shall affect any real estate, they shall enure for the sole benefit of such person as would be entitled to the said real estate, if the grantor or person incumbering the same, had died, immediately upon the execution of such instrument, and shall be deemed to be taken and held to and for the use of the person who would be so entitled. All grants, covenants and conveyances, for preventing such real estate from coming to, or devolving upon, the person hereby intended to enjoy the same as aforesaid, or in any way, incumbering or charging the same, so as to prevent such person from enjoying the same fully and entirely, shall be deemed fraudulent and void.

Such securities upon real estate to be for benefit of heir, &c., of grantor.

[The same.]

[Sections 18 and 19 repealed by L. 1886, ch. 593.]

§ 20. The answer to such bill shall not be used as testimony, in any case, against the person making such discovery.

[664]
Answers not testimony in certain cases.

[The same.]

§ 21. Any person offending against any of the provisions contained in this article, who shall be admitted and examined as a witness, in any court of record, to sustain any suit or prosecution herein authorized, may, by rule of the court, be discharged from all penalties by reason of such offence, if such person hath not before been convicted thereof, or of a similar offence, and if it appear to the court satisfactorily, that such person was duped or enticed into the commission of the offence, by those against whom he shall testify.

When witnesses may be discharged from penalties.

[1 R. L., 153, § 7.]

ARTICLE FOURTH.

OF RAFFLING AND LOTTERIES.

Sec. 22 & 23. [Repealed.]

24. Contracts made and securities given on account of raffling, void.

25. Money paid for any interest in a raffle, may be recovered back.

26-31. [Repealed.]

32. Purchasers of tickets, etc., in illegal lotteries, may recover double the sum paid.

33. Prizes drawn in illegal lotteries, forfeited; how collected and applied.

34-37. [Repealed.]

38. Transfers of property pursuant to an illegal lottery, etc., void.

39. Prohibition against selling lottery tickets, without license.

40. By whom licenses to be granted in certain cities and counties.

41. Contents of licenses; to be recorded; effect thereof.

42. Licenses to be granted to certain persons, without requiring bond, etc.

43. All other vendors to pay certain sums for licenses.

44. And to execute bonds; their penalty and condition.

45. Bonds, where filed; fee for license.

46. Bonds, when and by whom prosecuted; recoveries, to whom to be paid.

47. Monies received from licenses, etc., in New York, how applied.

48. Application of monies received in other cities, and in Lansingburgh.

- TITLE 8.** Smo. 49. When vendors to forfeit licenses, and precluded from ever receiving them.
 50. Certain persons authorized to divide lottery tickets into shares.
 51. Penalty for selling, etc., any shares, other than those allowed by last section.
 52. Certain evidence not necessary in prosecutions under this article.
 53. Forgery of lottery tickets, etc., how punished.
 54. Grand juries to be charged to enquire into violation of this article.

[665] [Sections 22 and 23 repealed by L. 1886, ch. 593.]

Contracts,
&c., on ac-
count of
raffling
void.

§ 24. All contracts, agreements and securities given, made or executed, for or on account of any raffle, or distribution of money, goods or things in action, for the payment of any money or other valuable thing, in consideration of a chance in such raffle or distribution, or for the delivery of any money, goods or things in action, so raffled for, or agreed to be distributed as aforesaid, shall be utterly void.

[The same.]

Money
paid for
chances,
etc., may
be re-
covered
back.

[666, 667]

§ 25. Any person who shall have paid any money, or valuable thing, for a chance or interest in any such raffle or distribution, as is prohibited by the preceding sections, may sue for and recover the same of the person to whom such payment or delivery was made.

[The same.]

[Sections 26 to 31 repealed by L. 1886, ch. 593.]

Purchasers
of tickets,
etc., to re-
cover dou-
ble the sum
paid.
14 Abb. Pr.
N. S., 256;
74 N. Y.
68; 73 N.
Y., 478; 96
N. Y., 364.

§ 32. Any person who shall purchase any share, interest, ticket, certificate of any share or interest or part of a ticket, or any paper or instrument purporting to be a ticket or share or interest in any ticket, or purporting to be a certificate of any share or interest in any ticket, or in any portion of any illegal lottery, may sue for and recover double the sum of money, and double the value of any goods or things in action, which he may have paid or delivered in consideration of such purchase, with double costs of suit.

[2 R. L., 189, § 4.]

Prizes in
illegal lot-
teries,
forfeited.

§ 33. Any prize that shall be drawn in any lottery forbidden by law, shall be forfeited to the use of the poor; and it shall be the duty of the overseers of the poor of the town where the person or persons drawing such prize, or any of them, shall reside, to sue for the same, in their names; and they shall recover the same, in an action for money had and received, founded upon this statute:

[668]

[The same.]

[Sections 34 to 37 repealed by L. 1886, ch. 593.]

Certain
transfers of
property
void.
56 N. Y.,
438; 65
Barb., 433;
1 T. & C.,
18.

§ 38. Every grant, bargain, sale, conveyance, or transfer of any real estate, or of any goods, chattels, things in action, or any personal property, which shall hereafter be made in pursuance of any lottery not authorized by the laws of this state, or for the purpose of aiding and assisting in such lottery, game or other device, to be determined by lot or chance, are hereby declared void and of no effect.

[L. 1819, 259, § 4.]

Selling lot-
tery tickets
without li-
cense pro-
hibited.

§ 39. No person within this state shall directly or indirectly sell, vend, barter, furnish, procure for the purpose of sale, or cause to be sold, vended, bartered, furnished or procured, any ticket or share or interest in any ticket, of any lottery or other device or game of chance, unless thereto duly licensed in the manner hereinafter prescribed; and any person offending in the premises, shall be deemed guilty of a misdemeanor, and shall be subject to a fine not exceed-

ing one hundred dollars for every ticket or share, or interest in any ticket so vended, sold, bartered, furnished or procured, or to imprisonment not exceeding one year. ART 4.

[This and the remaining sections of this title, except when otherwise noted, are taken from the act of 1827, 327.]

[Sections 40 to 51, regulating licensing of persons to sell lottery tickets, are omitted, (669-671) as the sale of lottery tickets is now absolutely prohibited. Const., art. 1, § 10. The sections in question are therefore abrogated. A statute passed in 1883, abolished all lotteries allowed by the laws of the state.]*

§ 52. It shall not be necessary in the trial of any suit or prosecution under the provisions of this article, to prove the existence of any lottery in which any ticket, share or part of a ticket purports to have been issued, or the actual signing of any such ticket, or share, or of any pretended ticket or share, of any pretended lottery; nor that any ticket, share or interest, was signed or issued by the authority of any manager, or of any person assuming to have authority as manager; but in all cases, proof of the sale, furnishing, bartering or procuring of any ticket, share or interest therein, or of any instrument, purporting to be a ticket, or part or share of any ticket, shall be conclusive evidence that such ticket, share or interest was signed and issued according to the purport thereof. Evidence in prosecutions under this article.

§ 53. If any person shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or willingly act or assist in the false making, altering, forging or counterfeiting any ticket of any lottery, or other game or device of chance, or any share or interest, or any certificate of any share or interest in any ticket of any lottery, or other game or device of chance, with intent to defraud any person or body corporate whatsoever, or shall utter or publish as true, or shall sell or exchange, or offer for sale or exchange, any false, altered, forged or counterfeited ticket of any lottery, or other game or device of chance, or of any share or interest, or of any certificate of any share or interest in any ticket of any lottery, with intention to defraud any person or body politic or corporate whatsoever, knowing the same to be false, altered, forged or counterfeited, then any such person being thereof convicted, shall be subject to imprisonment as prescribed by law. Forgery of lottery tickets, &c. (672)

[Act concerning Revised Statutes, of December 10, 1828, § 13. See chap. 1, 4th part R. S., title 3, § 33.]

§ 54. It shall be the duty of the presiding judge of every court of oyer and terminer, and of every court of general sessions of the Grand juries to be charged respecting this article.

*The following is the act referred to:

L. 1833, Chap. 306—An act fixing the period for closing all the lotteries authorised to be drawn within this state.

Preamble. Whereas John B. Yates and Archibald M'Intyre, assignees of all the unsatisfied lottery grants made by this state, have executed to the people thereof an agreement, bearing date the twenty-fifth day of January last, that all lottery grants heretofore made by this state, shall cease and determine from and after the close of the present year, and releasing and acquitting the people of this state from all right, title and claim to continue or draw any lottery within this state, after the last day of December next, providing the legislature will pass an act declaring that the lotteries authorised by this state, may be continued until the close of the present year: Therefore,

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Lotteries. SECTION 1. The lotteries authorised by law to be drawn within this state may be continued until the close of the present year; after the end of which period, it shall not be lawful to continue or draw any lottery within this state; but all and every lottery heretofore granted or authorized within this state, shall absolutely cease and determine.

Release. § 2. That the said agreement and release of the said John B. Yates and Archibald M'Intyre, shall be filed and recorded in the office of the secretary of state.

7 N. Y., 226; 1 N. Y., 180; 13 Barb., 577; 4 Barb., 314; 3 Denio, 101, 212; 23 Wend., 418; 7 Johns. R., 434; 5 Sandf. S. C., 614; E. D. Smith, 218; 26 Hun, 360.

TITLE 8.

peace, specially to charge every grand jury to inquire into all violations of the laws against lotteries, and against the unlawful selling of tickets in lotteries.

ARTICLE FIFTH.**OF THE RACING OF ANIMALS.**

SEC. 55. [Repealed.]

56. Duty of public officers to prevent races and bind over offenders.

57. Penalty for contributing or collecting purse, etc., to be raced for.

58. Penalty on owners of horses, etc., and on persons betting.

59. All racing in New-Utrecht prohibited; penalty.

60. [Repealed.]

[Section 55 repealed by L. 1886, ch. 593.]

Public officers to prevent races and bind over offenders.

§ 56. It shall be the duty of all officers concerned in the administration of justice, to attend at the place where they shall know or be informed that any race is about to be run contrary to the provisions of law, and there give notice of the illegality thereof, and endeavor to prevent such race, by dispersing the persons collected for the purpose of attending the same, and by all other ways and means in their power. Upon their own view of any persons offending against the provisions of the preceding section, as well as upon the testimony of others, such judges and justices shall issue warrants for the immediate apprehension of the persons so offending, to the end that they may be compelled to enter into recognizances, with sufficient sureties, for their good behavior, and for their appearance at some proper court, to answer for the said offences.

[1873]

Penalty for contributing or collecting purse, &c., to be raced for.

§ 57. Every person who shall contribute or collect, or solicit any other person to contribute or collect, any money, goods or things in action, for the purpose of making up a purse, plate or other valuable thing, to be raced for by any animal contrary to law, or to be given to the owner or rider of any animal so racing contrary to law, shall forfeit twenty-five dollars, to be sued for and recovered by and in the name of the overseers of the poor of the town where the offence may be committed.

[1 R. L., 222, §§ 2, 3 and 4.]

Penalty on owners of horses, &c., and on persons betting.
10 Wend., 30.

§ 58. The owner, in the whole or in part, of any animal that shall be used or employed, by his permission or privity, in racing, contrary to law, shall forfeit the value of the animal so employed. Every person concerned in laying any bet or wager upon the event of any illegal race, or in contributing to the stakes to be awarded upon any such event, shall forfeit the amount of the bet or wager so made, or of the sum or thing so contributed. The said forfeiture may be sued for and recovered by the overseers of the poor of the town where the offence may be committed.

[The same.]

Racing in New Utrecht prohibited.

§ 59. All racing and running of animals for the trial of speed within the town of New-Utrecht, in the county of Kings, whether the same be for any bet, wager, or stakes, or not, shall be deemed a misdemeanor, and the parties concerned therein shall, on conviction, be liable to fine and imprisonment, as declared in the preceding fifty-fifth section.

[L. 1820, 79.]

[Section 60 repealed by L. 1886, ch. 543.]

ART. 6.**ARTICLE SIXTH.****OF PROFANE CURSING AND SWEARING.**

SEC. 61 & 62. Penalty for profane swearing; when summary conviction to be made.
 63. Proceedings if penalty be not paid or secured.

§ 61. Every person who shall profanely curse or swear shall forfeit one dollar for every offence; if the offence be committed in the presence and hearing of any justice of the peace, mayor, recorder or alderman of any city, while holding a court, a conviction of the offender shall be immediately made by such magistrate, without any other proof whatsoever.

Penalty for
 profane
 swearing;
 summary
 conviction.
 [674]

[2 R. L., 196, §§ 6, 7 and 8.]

§ 62. And if, at any other time, the offence be committed in the presence and hearing of such justice, mayor, recorder or alderman, under such circumstances, as in the opinion of the magistrate, to amount to a gross violation of public decency, such magistrate may, in his discretion, convict the offender without other proof.

Id.; other
 cases.

[The same.]

§ 63. If the offender do not forthwith pay the penalties incurred, with the costs, or give security for their payment within six days, he shall be committed by warrant to the common jail of the county for every offence, or for any number of offences whereof he was convicted, at one and the same time, for not less than one day, nor more than three days, there to be confined in a room separate from all other prisoners.

Proceed-
 ings if pen-
 alty be not
 paid or
 secured.
 16 Abb. Pr.,
 226.

[The same.]

ART. 7.**ARTICLE SEVENTH.****OF THE DISTURBANCE OF RELIGIOUS MEETINGS.**

SEC. 64. [Repealed.]
 65. Penalty; proceedings to collect; summary conviction.
 66. Duty of peace officers to apprehend offenders against this article.
 67. Judicial officers may order offenders into custody.
 68. Proceedings on conviction, if penalty be not paid or secured.

[Section 64 repealed by L. 1886, ch. 593.]

§ 65. Whoever shall violate either of the provisions of the foregoing section, may be convicted summarily before any justice of the peace of the county, or any mayor, recorder, alderman or other magistrate of any city, where the offence shall be committed, and on such conviction, shall forfeit a sum not exceeding twenty-five dollars, for the benefit of the poor of the county.

Penalty.
 Proceed-
 ings to col-
 lect.
 17 Wend.,
 211, 212.

[The same.]

§ 66. It shall be the duty of all sheriffs, and their deputies, coroners, marshals, constables, and other peace officers, who may be present at the meeting of any assembly for religious worship, which shall be interrupted or disturbed in the manner herein prohibited; to apprehend the offender, and take him before some justice of the

[678]
 Offenders
 to be ap-
 prehended
 by peace
 officers
 present.
 19 Johns.
 R., 40; 10

TITLE 8.
Wend., 377;
9 Wend.,
62.

peace, or other magistrate authorized to convict as aforesaid, to be proceeded against according to law.

[The same.]

May be or-
dered into
custody by
judicial
officers.
3 Wend.,
263.

§ 67. All judges, mayors, recorders, aldermen, and justices of the peace, within their respective jurisdictions, upon their own view of any person offending against the provisions of this article, may order the offender into the custody of any officer in the preceding section named, or of any official member of the church or society so assembled and disturbed, for safe keeping until he shall be let to bail, or a trial for such offence be had.

[The same.]

Proceed-
ings if pen-
alty be not
paid or se-
cured.
19 Johns.
R., 40; 19
Wend., 545.

§ 68. If any person convicted of any of the offences herein prohibited, shall not immediately pay the penalty incurred, with the costs of the conviction, or give security to the satisfaction of the officer before whom the conviction shall be had, for the payment of the said penalty and costs within twenty days thereafter, he shall be committed by warrant to the common jail of the county, until the same be paid, or for such term, not exceeding thirty days, as shall be specified in the warrant.

[The same.]

L. 1834, Chap. 78—An act to amend article seventh, title eighth, chapter twentieth, part first of the Revised Statutes, entitled "Of the disturbance of religious meetings."

Person complained of may demand a jury. SECTION 1. From and after the passage of this act, it shall and may be lawful for any person who may be complained of for a violation of any of the provisions of the article hereby amended, before the court shall proceed to investigate the merits of the cause, to demand of such court that he may be tried by a jury. Upon such demand, it shall be the duty of such court to issue a venire, to any constable of the county, or marshal of the city, where the offense is to be tried, commanding such officer to summon the same number of jurors, and in the same manner, as is provided for the summoning of jurors before courts of special sessions. The said court shall proceed to empanel a jury for the trial of said cause, in the same manner, and shall be subject to all the rules and regulations prescribed in the act providing for trials by jury in courts of special sessions.

17 Wend., 213.

Costs. § 2. In addition to the costs allowed by law for prosecution under the article hereby amended, all the costs consequent upon a trial by jury shall be added and paid by the party offending, in case of conviction, and shall be the same as is allowed by law in civil cases.

ARTICLE EIGHTH.

(675, 676)

OF THE OBSERVANCE OF SUNDAY.

* [Repealed by L. 1886, ch. 593.]

L. 1871, Chap. 702 — An act relative to contracts for advertisements in newspapers published on Sunday.

Sunday papers. SECTION 1. All contracts or agreements of any nature made with the publishers or proprietors of any paper dated, published or issued on the first day of the week shall be as valid, legal and binding, as contracts made with newspapers dated or published on any other day of the week.

ARTICLE NINTH.**ART. 9.****GENERAL PROVISIONS TO ENFORCE THE PROHIBITIONS OF THE THREE LAST ARTICLES.**

- Smo. 73. Proceedings to collect penalties imposed by three last articles.
 74. Such prosecutions to be commenced within twenty days.
 75. Execution to collect penalties; its contents.
 76. Certificate of conviction to be filed with county clerk.
 77. Amount of fees allowed; by whom to be paid.

§ 73. Whenever complaint shall be made to any justice of the peace, mayor, recorder, or alderman, of a violation of either of the provisions contained in the three last articles, relative to profane swearing, the disturbance of religious meetings, or the observance of Sunday, or when any of such violations shall happen in the presence of such officer, he shall cause the offender to be brought before him, and shall proceed summarily to inquire into the facts; and if the person charged be found guilty, a record of his conviction shall be made and signed by such officer, before issuing any process to enforce the same; which conviction shall be final, and shall not be re-examined upon the merits in any court.

Proceedings to collect penalties imposed by three last articles.
 10 Wend., 378; 9 Wend., 62.
 [677]

[2 R. L., 196, §§ 9 and 10.]

§ 74. No prosecution shall be maintained for any of the violations specified in the preceding section, unless the same be instituted by the actual issuing of process to apprehend the offender, or by his actual appearance to answer the complaint, within twenty days next after the offence committed.

Time limited for prosecuting.

[2 R. L., 197, §§ 11, 12, and other sections.]

§ 75. Upon a conviction being had for any of the offences in the three last articles specified, where no other special provision is made for the collection of the penalties incurred, the magistrate before whom the same is made, shall issue an execution to any constable of the county, commanding him to levy the said penalties, and the costs of the conviction, by distress and sale of the goods and chattels of the offender, and in case sufficient goods and chattels can not be found, then to commit such offender to such common jail of the county, for such time as shall be specified in such execution, not less than one day nor more than three days.

Execution to collect penalties.

[The same.]

§ 76. Within thirty days after any such conviction shall be had, the magistrate making the same, shall cause to be filed in the office of the clerk of the county, a certificate of such conviction, briefly stating the offence charged, the conviction and judgment thereon, and if any fine has been collected, the amount thereof and to whom paid.

Certificate of conviction when and where to be filed.

[Act concerning Revised Statutes, December 10, 1828.]

TITLE 9.
Fees of jus-
tices and
officers.

§ 77. In all prosecutions for any of the offences specified in the three last articles, the like fees shall be allowed and taken as in civil suits before justices of the peace, which shall in no case exceed five dollars, and be paid by the party offending, over and above the penalties incurred; but in case of the imprisonment of the offender, no charge of fees shall be allowed.

[2 R. L., 197, §§ 11, 12, and other sections.]

TITLE II.
[695]

TITLE XIII.

Of the Law of the Road, and the Regulation of public Stages.

- SEC. 1.** Persons in carriages meeting on any road, to turn to the right; penalty.
2. Penalty on owners of stages, etc., employing drivers addicted to drunkenness.
3. Owner when to discharge driver; penalty for neglect.
4. [Repealed.]
5. Penalty on drivers for leaving horses without being tied, etc.
6. Owners of certain carriages liable for acts of drivers, negligent or otherwise.
7. Meaning of term "carriage," as used in this title.
8. Laws of cities, etc., concerning hackney coaches, not to be affected.

Carriages meeting on roads to turn to the right.
 16 N. Y., 322; 13 Barb., 615; 7 Wend., 185; 26 Hun, 220.

SECTION 1. Whenever any persons travelling with any carriages, shall meet on any turnpike road or public highway in this state, the persons so meeting shall seasonably turn their carriages to the right of the centre of the road, so as to permit such carriages to pass without interference or interruption, under the penalty of five dollars for every neglect or offence, to be recovered by the party injured.

[2 R. L., 283, § 41; 227, § 6.]

Drivers addicted to drunkenness, not to be employed.

§ 2. No person owning any carriage running or travelling upon any road in this state, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such carriage, who is addicted to drunkenness, or to the excessive use of spirituous liquor; and if any such owner shall violate the provisions of this section, he shall forfeit at the rate of five dollars per day, for all the time during which he shall have kept any such driver in his employment, to be sued for by the district-attorney of the county in which such owner shall reside. The penalty, when recovered, shall be for the use of the poor of such county, except that the court in which the recovery shall be had, may allow a portion of said penalty, not exceeding twenty-five dollars, to be retained by such district-attorney, as a compensation for his services and expenses, beyond the taxable costs.

[L. 1827, 229, § 1.]

Penalty, how collected.

How applied.

Drivers, when to be discharged.

§ 3. If any driver, whilst actually employed in driving any such carriage, shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, it shall be the

duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith to discharge such driver from his employment; and every such owner who shall retain or have in his service, within six months after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day, for all the time during which he shall keep any such driver in his employment after receiving such notice, to be sued for and applied as directed in the last preceding section.

[Section 4 repealed by L. 1886, ch. 593.]

§ 5. It shall not be lawful for the driver of any carriage used for the purpose of conveying passengers for hire, to leave the horses attached thereto, while passengers remain in the same, without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit, for the use of the poor the sum of twenty dollars, to be recovered by action to be commenced within six months. And unless the amount of such recovery be paid forthwith, an execution shall be immediately issued therefor.

[The same.]

§ 6. The owners of every carriage running or travelling upon any turnpike road or public highway, for the conveyance of passengers, shall be liable, jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the employment of such owner or owners, as a driver, whilst driving such carriage, to any person, or to the property of any person; and that whether the act occasioning such injury or damage be wilful or negligent, or otherwise, in the same manner as such driver would be liable.

[L. 1824, 347, § 1.]

§ 7. The term "carriage," as used, in this title, shall be construed to include stage-coaches, wagons, carts, sleighs, sleds, and every other carriage or vehicle used for the transportation of persons and goods, or of either of them.

§ 8. Nothing contained in this title, shall interfere with or affect any law concerning hackney coaches or carriages in any of the cities of this state, nor interfere with nor affect the laws or ordinances of any such city for the licensing or regulating such coaches or carriages.

[L. 1826, 254, § 10.]

TITLE 13.

Penalty for neglect.

[593] Leaving horses without being tied, etc.

Owners of certain carriages liable for acts of drivers. 51 N. Y., 226; 47 N. Y., 122.

Term "carriage," defined. 51 N. Y., 226.

Hackney coaches.

L. 1887, Chap. 704—An act in relation to the use of bicycles and tricycles.

Bicycles, tricycles, etc., declared to be "carriages" within this title of R. S. SECTION 1. Bicycles, tricycles and all other vehicles propelled by manumotive or pedomotive power, are hereby declared to be carriages within the meaning of that term as used in section one of title thirteen of chapter twenty of part one of the Revised

Statutes of the state of New York, and all persons by whom bicycles, tricycles and said other vehicles are used, ridden or propelled, upon the public highways of this state, shall be entitled to the same rights and subject to the same restrictions in the use thereof as are prescribed in said Revised Statutes in the cases of persons using carriages drawn by horses.

Entitled to free use of roads, etc. § 2. The commissioners, trustees or other authorities having charge or control of any public street, public highway, public parkway, driveway or public place in this state, shall have no power or authority to pass, enforce or maintain any ordinance, rule or regulation by which any person using a bicycle or tricycle, shall be excluded or prohibited from the free use of any public highway, street, avenue, roadway, driveway, parkway or public place, at any time when the same is open to the free use of persons having and using other pleasure carriages.

Limitation of this act. § 3. Nothing in this act shall be so construed as to prevent the passage, enforcement or maintenance of any regulation, ordinance or rule, regulating the use of bicycles or tricycles in public highways, streets, driveways, parkways and public places in such manner as to limit and determine the proper rate of speed with which such vehicles may be propelled, nor in such manner as to require, direct or prohibit the use of bells, lamps and other appurtenances, nor to prohibit the use of any vehicle upon that part of the street, highway or parkway, commonly known as the foot-path or sidewalk.

Repeal. § 4. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

TITLE XIX.

Of Brokerage, Stock-Jobbing, and Pawn-Brokers.

ART. 1.—Regulations concerning brokers.

ART. 2.—Of stock-jobbing.

ART. 3.—Of pawn-brokers.

ARTICLE FIRST.

REGULATIONS CONCERNING BROKERS.

- Sec. 1. Rate of brokerage, etc., and fee for making bond, etc., prescribed.
 2. Excess over rate, may be recovered back within one year.
 3. If neglected for a year, overseers of poor may recover excess.
 4. Persons liable to be sued, may be compelled to discover, etc.
 5. Persons discovering and returning excess, exonerated from further penalty.

SECTION 1. No person shall, directly or indirectly, take or receive more than fifty cents for a brokerage, soliciting, driving, or procuring the loan or forbearance of one hundred dollars for one year, and in that proportion for a greater or less sum; nor more than thirty-eight cents, for making or renewing any bond, bill, note or other security given for such loan or forbearance, or for any counter bond, bill, note, or other security concerning the same.

[The provisions of this title, with some variations, are taken from 1 R. L., 65, §§ 3 and 4.]

Rate of
brokerage,
&c.
Fee for
making,
&c., bond,
&c.
6 Barb.,
178; 56
Barb., 86; 3
Sandf., 228;
56 N. Y.,
310; 6 Hen.,
228; 10
Daly, 242.

* The numbers of these sections are thus changed from 5, 6 and 7 by L. 1878, ch. 228.

TITLE 19.

Excess
may be re-
covered
back.

§ 2. Every person who shall pay, deliver, or deposit any money, property, or thing in action, over and above the rate aforesaid, and his personal representatives may, within one year after such payment, delivery or deposit, sue for and recover the same of the person so taking or receiving such money, property, or thing in action, or of his personal representatives.

When
overseers
of poor
may re-
cover
excess.

§ 3. In case such suit shall not be brought within the time above prescribed, in good faith, or in case it shall be discontinued, or wilfully delayed, then the overseers of the poor of the city or town where the offence was committed, may, within one year after such neglect, discontinuance, or delay, sue for and recover the money, property, or thing in action, so received, delivered, or deposited, from the person receiving the same, or his personal representatives, for the use of the poor of the county.

Discovery,
&c., com-
pelled.

(710)

§ 4. Every person who shall be liable to be sued by virtue of the foregoing provisions, shall be obliged and compellable to answer upon oath, any bill that shall be preferred against him in the court of chancery, for discovering the money, property or thing in action so illegally received, and may be compelled by the decree of such court to return the same.

Discovery,
&c., to ex-
onerate
from fur-
ther pen-
alty.

§ 5. Upon the discovery of the money, property, or other thing so illegally received, and the repayment and return thereof, with the payment of the costs of such suit, the person making such discovery and return shall be acquitted and discharged from any other punishment, forfeiture or penalty, which he may have incurred by reason of having so illegally received such money, property, or other thing so discovered and returned.

ARTICLE SECOND.**OF STOCK-JOBBER.**

[Sections 6, 7 and 8, constituting the whole of this article, were repealed by L. 1858, ch. 134.]

L. 1858, Chap. 134—An act to legalize the sale of stocks on time.

Contracts valid without payment of price. SECTION 1. No contract, written or verbal, hereafter made, for the purchase, sale, transfer or delivery of any certificate, or other evidence of debt, due by or from the United States, or any separate state, or of any share or interest in the stock of any bank, or of any company incorporated under any law of the United States, or of any individual state, shall be void or voidable for any want of consideration, or because of the non-payment of any consideration, or because the vender, at the time of making such contract, is not the owner or possessor of the certificate or certificates, or other evidence of such debt, share or interest.

28 Barb., 27; 9 N. Y., 520; 5 Sandf., 411; 4 Robt., 408; 20 W. D., 82; 21 W. D., 399.

[Section 2 repeals the above mentioned provisions of the Revised Statutes.]

(711)

ARTICLE THIRD.**OF PAWNBROKERS.**

[This entire article was repealed by L. 1886, ch. 598.]

REVISED STATUTES
OF THE
STATE OF NEW YORK.

[717]

PART II.

AN ACT concerning the acquisition, the enjoyment and the transmission of property, real and personal; the domestic relations, and other matters connected with private rights.

WHEREAS it is expedient that the several statutes of this state, relating to the acquisition, the enjoyment and the transmission of property, real and personal; the domestic relations, and certain matters connected with private rights; should be consolidated and arranged in appropriate chapters, titles and articles; that the language thereof should be simplified; and that omissions and other defects should be supplied and amended: Therefore,

The People of the State of New York, represented in Senate and Assembly, do declare and enact as follows.

CHAPTER I.

OF REAL PROPERTY, AND OF THE NATURE, QUALITIES AND ALIENATION OF ESTATES THEREIN.

TITLE I.—OF THE TENURE OF REAL PROPERTY, AND THE PERSONS CAPABLE OF HOLDING AND CONVEYING ESTATES THEREIN.

TITLE II.—OF THE NATURE AND QUALITIES OF ESTATES IN REAL PROPERTY, AND THE ALIENATION THEREOF.

TITLE III.—OF ESTATES IN DOWER.

TITLE IV.—OF ESTATES FOR YEARS, AND AT WILL, AND THE RIGHTS AND DUTIES OF LANDLORDS AND TENANTS.

TITLE V.—MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

TITLE I.

[718]

TITLE I.

Of the Tenure of Real Property, and the Persons capable of holding and conveying Estates therein.

ART. 1.—Of the tenure of real property.

ART. 2.—Of the persons capable of holding and conveying lands.

ARTICLE FIRST.

OF THE TENURE OF REAL PROPERTY.

- SEC. 1. People of this state deemed original owners of lands therein.
 2. Escheated lands to be held subject to trusts, etc.; how executed.
 3. Lands declared allodial; feudal tenures abolished.
 4. Abolition of tenures not to affect certain rights, or powers of courts.
 5. Guardianship of infants owning lands, to whom it belongs.
 6. Provisions respecting guardians in soccage, to apply to them.
 7. Superseded by appointment of testamentary or other guardian.

The people, original owners of lands in this state.
 9 N. Y., 319;
 6 N. Y., 467;
 15 Barb., 194; 8 Barb.,

SECTION 1. The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands, the title to which shall fail from a defect of heirs, shall revert or escheat to the people.

194; 25 Wend., 219; 17 Wend., 312; 21 How. Pr. R., 78; 12 Abb. Pr. R., N. S., 473; 24 Hun, 187; 22 N. Y., 463, 477.
 [1 R. L., 380, § 2.]

To hold escheated land subject to trusts, &c. How trusts, &c., executed.
 27 Barb., 149; 43 N. Y., 181.

§ 2. All escheated lands, when held by the state, or its grantees, shall be subject to the same trusts, incumbrances, charges, rents, and services, to which they would have been subject, had they descended; and the court of chancery shall have power to direct the attorney-general to convey such lands to the parties equitably entitled thereto, according to their respective rights, or to such new trustee as may be appointed by such court.

All lands allodial. Feudal tenures abolished.
 43 N. Y., 182; 6 N. Y., 467, 510; 27 Barb., 149; 8 Barb., 28.
 Certain rights, &c., not to be affected.
 27 Barb., 149; 6 N. Y., 467, 510; 8 Barb., 28.

§ 3. All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates; and all feudal tenures, of every description, with all their incidents, are abolished.

[1 R. L., 70, §§ 2 to 6.]

§ 4. The abolition of tenures shall not take away or discharge, any rents or services certain, which at any time heretofore, have been, or hereafter may be, created or reserved; nor shall it be construed to affect or change the powers or jurisdiction of any court of justice in this state.

[The same. See §§ 11 to 15, inclusive, art. 2, of Constitution.]

Who to be guardians of infants owning lands.
 21 Barb., 299; 30 Barb., 635;
 7 Cow., 38;
 5 Paige, 41;
 15 Wend., 633; 63

§ 5. Where an estate in lands shall become vested in an infant, the guardianship of such infant, with the rights, powers and duties of a guardian in soccage, shall belong:

1. To the father of the infant;
2. If there be no father, to the mother;
3. If there be no father or mother, to the nearest and eldest relative of full age, not being under any legal incapacity; and as be-

tween relatives of the same degree of consanguinity, males shall be preferred.

R. (T. & C.), 92; 3 Id., 774; 1 Redf., 334; 46 N. Y., 596; 56 Barb., 198; 1 Dem., 180; 185 N. Y., 569.

§ 6. To every such guardian, all statutory provisions that are or shall be in force, relative to guardians in soccage, shall be deemed to apply.

635; 56 Barb., 198.

§ 7. The rights and authority of every such guardian shall be superseded, in all cases where a testamentary or other guardian shall have been appointed under the provisions of the third title of the eighth chapter of this act.

ART. 2.
Barb., 277;
1 N. Y. S. C.
185 N. Y., 569.

[719]
Subject to
certain
laws.
50 Barb.,
Barb., 198.

When su-
perseded.
55 Barb.,
430; 1
Redf., 334;
46 N. Y.,
596; 56
Barb., 198.

ARTICLE SECOND.

OF THE PERSONS CAPABLE OF HOLDING AND CONVEYING LANDS.

- Sec. 8. Citizens of U. States capable of holding, etc., lands in this state.
9. Titles of possessors at certain time, of lands not to be affected by alienism, etc.
10. Who capable of aliening lands.
11. Purchases from Indians since certain time, void, etc.
12. Indians cannot dispose of or contract for, etc., land, except, etc.
13. Heirs of certain Indian patentees, may convey in certain manner.
14. Occupants of lands so conveyed to be paid for improvements.
15. Resident aliens may make certain deposition.
16. Right thereafter to hold lands and make certain dispositions of them.
17. Not to hold lands acquired previous to making such deposition.
18. If alien die within six years, his heirs may inherit lands.
19. Aliens may take mortgages on sales of certain lands, etc.
20. Liabilities and incapacities of aliens holding lands.

§ 8. Every citizen of the United States is capable of holding lands within this state, and of taking the same by descent, devise or purchase.

Lans., 240; 80

Who capa-
ble to hold
lands.
26 N. Y.,
336, 360; 7
N. Y., 171.

§ 9. No title or claim of any citizen of this state, who was in the actual possession of lands on the twenty-first day of April, one thousand eight hundred and twenty-five, or at any time before, shall be defeated or prejudiced on account of the alienism of any person through or from whom his title or claim to such lands may have been derived.

Certain ti-
ties not to
be affected
by alien-
ism.

§ 10. Every person capable of holding lands, (except idiots, persons of unsound mind, and infants,) seised of, or entitled to, any estate or interest in lands, may alien such estate or interest at his pleasure, with the effect, and subject to the restrictions and regulations provided by law.

Who capa-
ble of alien-
ing lands.
6 N. Y., 467;
4 N. Y., 15;
21 Barb.,
551; 13
Barb., 147;
13 How. Fr.
Boaw., 337.

R., 441; 26 Wend., 297; 49 Barb., 54; 3

[1 R. L., 70, § 1, and 74, § 5.]

§ 11. No purchase or contract for the sale of lands in this state, made since the fourteenth day of October, one thousand seven hundred and seventy-five, or which may hereafter be made, with the Indians in this state, is valid, unless made under the authority and with the consent of the legislature of this state.

[Const., art. 7, § 12.]

§ 12. No Indian residing within this state, can make any contract for or concerning the sale of any lands within this state, or in any

Sales, &c.,
by Indians,
prohibited.
8 Cow., 190.

TITLE I. manner give, sell, devise or otherwise dispose of any such lands, or any interest therein, without the authority and consent of the legislature of this state, except as herein after provided.

[2 R. L., 153, § 1.]

[720]
Heirs of
certain In-
dians may
convey, &c.
15 Johns.
R., 264.

§ 13. The heirs of every Indian to whom land has been granted for military services rendered during the war of the revolution, shall be and are capable of taking and holding any such lands by descent, in the same manner as if such heirs were citizens of this state, at the death of their ancestors; and every conveyance executed by such patentee, or his heirs, after the seventh day of March, one thousand eight hundred and nine, to any citizen of this state, for any such land, shall be valid, if executed with the approbation of the surveyor-general of this state, to be expressed by an endorsement made on such conveyance and signed by him.

[2 R. L., 175, § 55.]

Improve-
ments to be
paid for

§ 14. If any land so conveyed shall have been occupied or improved, at the time of such conveyance, the occupant, his heirs or assigns, shall be entitled to be paid for the improvements made by them, or either of them, in the manner provided in the second section of the act, entitled "An act concerning lands in the military tract," passed April 8, 1813.

[The same.]

Resident
aliens may
make de-
position,
&c., to be
filed, &c.,
by secreta-
ry of state.
20 N. Y.,
320; 1
Edw., 512;
10 Wend.,
379; 26 N.
Y., 356, 360;
42 N. Y.,
181; 39 N.
Y., 338; 7
Lans., 236;
66 Barb.,
374; 1 Abb.
Court App.

§ 15. Any alien who has come, or may hereafter come into the United States may make a deposition or affirmation in writing before any officer authorized to take the proof of deeds to be recorded, that he is a resident of, and intends always to reside in the United States, and to become a citizen thereof, as soon as he can be naturalized, and that he has taken such incipient measures as the laws of the United States require to enable him to obtain naturalization, which shall be certified by such officer, and be filed and recorded by the secretary of state in a book to be kept by him for that purpose; and such certificate, or a certified copy thereof, shall be evidence of the facts therein contained. [*Thus amended by L. 1834, ch. 272.*]

Dec., 276; 81 N. Y., 131; 36 Hun, 230.

[L. 1825, 427, §§ 1, 2 and 3.]

Entitled
thereafter
to hold
lands; may
dispose of
them, but
not to
lease.
4 Edw.,
407; 20
Wend.,
230; 21
Wend., 60;
1 Abb. Ct.
App. Dec.
276; 1
Edw., 512;
26 N. Y.,
356, 360;
10 Wend.,
379; 42 N. Y.,
181; 39 N. Y.,
338; 36 Hun,
230.

§ 16. Any alien who shall make and file such deposition, shall thereupon be authorised and enabled to take and hold lands and real estate, of any kind whatsoever, to him, his heirs and assigns forever, and may, during six years thereafter, sell, assign, mortgage, devise and dispose of the same, in any manner, as he might or could do if he were a native citizen of this state, or of the United States, except that no such alien shall have power to lease or demise any real estate, which he may take or hold by virtue of this provision, until he becomes naturalized.

[The same.]

Not to hold
lands pre-
viously ac-
quired.

20 N. Y.,
320; 21
Wend., 62;

§ 17. Such alien shall not be capable of taking or holding any lands or real estate, which may have descended, or been devised or conveyed to him previously to his having become such resident, and made such disposition or affirmation as aforesaid.

4 Edw., 407; 7 Lans., 240; 26 N. Y., 356, 360.

[The same.]

§ 18. When such alien shall die within six years after making and filing such deposition, intestate, leaving heirs inhabitants of the United States, such heirs shall take by descent, and hold any real estate of which such alien died seised, in the same manner as they would have inherited if such alien had been, at the time of his death, a citizen of this state.

[L. 1826, 348, § 2.]

AET. 2.
Heirs to inherit in certain cases.
[721]

§ 19. If any alien shall sell and dispose of any real estate, which he is entitled by law to hold and dispose of, he, his heirs and assigns, may take mortgages in his or their own name, as a collateral security for the purchase money due thereon, or any part thereof; and such mortgagee, his heirs, assigns or legal representatives, or any of them, may re-purchase any of the said premises, on any sale thereof made by virtue of any power contained in such mortgage, or by virtue of any judgment or decree of any court of law or equity, rendered in order to enforce the payment of any part of such money, and may hold the same premises, in the like manner, and with the same authority, as the same were originally held by such mortgagor.

On sale of certain lands, aliens may take mortgages and may re-purchase lands sold in certain cases.
20 N. Y., 320.

[2 R. L., 542, § 2.]

§ 20. Every alien who shall hold any real estate by virtue of any of the foregoing provisions, shall be subject to duties, assessments, taxes and burthens, as if he were a citizen of this state; but shall be incapable of voting at any election, or of being elected or appointed to any office, or of serving on any jury.

Liabilities and incapacities of certain aliens.

[L. 1825, 427, § 4.]

L. 1798, Chap. 72 — An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned.

Conveyances to aliens valid. SECTION 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That all and every conveyance or conveyances, hereafter to be made or executed to any alien or aliens, not being the subject or subjects of some sovereign state or power, which is or shall be, at the time of such conveyance, at war with the United States of America, shall be deemed valid to vest the estate thereby granted, in such alien or aliens; and it shall and may be lawful to and for such alien or aliens, to have and to hold the same, to his, her, or their heirs and assigns forever, any plea of alienism to the contrary notwithstanding: *Provided always,* That it shall not be lawful for any such alien, or the heirs or assigns of any such alien, being aliens, to reserve any rent or service whatsoever, upon any grant, lease, demise or conveyance whatsoever, to be made of any such lands or tenements; and all rents, payments, services or reservations whatsoever, which shall be reserved or made payable in, or by or in consequence of any such grant, lease, demise or conveyance whatsoever, of any such lands or tenements, shall be utterly void and of no effect.

7 N. Y., 305; 28 Barb., 653; 8 Paige, 433; 6 Paige, 448; 5 Paige, 114; 5 Cow., 814, 394; 2 Edw., 585; 1 Edw., 512; 1 Sandf. Ch., 139; 13 Wend., 458, 546; 7 Wend., 367; 4 Wend, 511; 2 Johns. Ch. R., 508; 20 Johns. R., 707; 16 Johns. R., 210; 11 Johns. R., 418; 10 Johns. R., 69, 117, 183; 9 Johns. R., 303; 1 Johns. Ca., 399; 64 N. Y., 262.

Such conveyances to be recorded. § 2. *And be it further enacted,* That all and every deed or deeds, conveyance or conveyances, to be executed in pursuance of this act, shall be recorded within twelve months after the day of the date of the same, in the secretary's office of this state; and in default thereof, the grantees named in any such deed or conveyance, shall be considered in all respects as

aliens, and the lands and tenements thereby conveyed shall enure to the use of the people of this state.

Limitation. § 3. *And be it further enacted*, That this act shall be and remain in force for the term of three years from and after the passing thereof, and no longer.

L. 1802, Chap. 49 — An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned.

Preamble. WHEREAS many good and industrious persons, being aliens, have emigrated to this state, with an intention to settle and reside therein, and have expended the greater part of their capital in purchasing and improving real property; and whereas such emigrations have tended to promote as well an improvement in the agriculture as the manufactures of the state, and it is deemed just and right not only to protect the property which they have acquired, but also to encourage others to settle and reside within this state, by enabling them to purchase and hold real property: Therefore,

Purchases of lands by alien inhabitants, valid. SECTION 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly*, That all purchases of lands made or to be made by any alien or aliens who have come to this state and become inhabitants thereof, shall be deemed valid to vest the estate to them granted; and it shall and may be lawful to and for such alien or aliens, to have and to hold the same to his, her or their heirs or assigns forever, and to dispose of the same, any plea of alienism to the contrary thereof notwithstanding: *Provided*, That any purchase hereafter to be made by any such alien, does not exceed one thousand acres.

7 N. Y., 305; 21 Wend., 61; 20 Wend., 230, 336; 16 Wend., 619; 7 Wend., 367; 5 Cow., 713; 1 Cow., 89.

Aliens may take mortgages. § 2. *And be it further enacted*, That in case any alien or aliens shall sell and dispose of any real estate, which by law they are entitled to hold and dispose of, or which they may hereafter hold in virtue of this act, such alien or aliens, his, her or their heirs or assigns, shall and may, and are hereby declared capable of taking a mortgage in his, her or their own name or names, as a collateral security for the purchase money due thereon, or any part thereof.

16 Wend., 619.

Titles of lands derived from aliens not to be impeached. § 3. *And be it further enacted*, That the title of any citizen or citizens of this state, to any land or lands within this state, heretofore conveyed to such citizen or citizens, and now in the actual possession of such citizen or citizens, shall not be questioned or impeached by reason of the alienism of any person or persons from or through whom such title may have been derived: *Provided*, That nothing in the said last clause contained, shall extend to the military or bounty lands so called, in the counties of Onondaga and Cayuga.

Time for recording certain conveyances extended. § 4. *And be it further enacted*, That all and every conveyance or conveyances executed in pursuance of the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," and which have not been recorded agreeably to the directions of the said act, shall and may be recorded within twelve months after the passing of this act; and the lands thereby conveyed, shall not, in such case, enure or be deemed to enure to the use of the people of this state.

L. 1804, Chap. 109 — An act for the payment of certain officers of government, and for other purposes.

* * * * *

Privileges of act extended to aliens, etc. § 31. *And be it further enacted*, That all the provisions in favor of aliens, contained in the act, entitled "An act to enable

aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," passed the twenty-sixth day of March, one thousand eight hundred and two, shall be, and hereby are extended to all aliens who shall have come to this state, and become inhabitants thereof, at the time of passing this act.

L. 1803, Chap. 25—An act to extend the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned."

Further extended. SECTION 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That all the provisions in favor of aliens, contained in the act entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," passed the 26th of March, 1802, shall be, and hereby are extended to all aliens who may have come into this state, and become inhabitants thereof, at the close of the present session of the legislature.

L. 1807, Chap. 123—An act to enable certain persons therein named, to purchase and hold real estate.

* * * * *
Titles through aliens. § 2. *And be it further enacted,* That the title of any citizen or citizens of this state, to any land or lands within this state, heretofore conveyed to such citizen or citizens, and now in the actual possession of such citizen, shall not be questioned or impeached by reason of the alienism of any person or persons from or through whom such title may have been derived.

L. 1808, Chap. 175—An act to extend the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned."

Act of 1802 extended. SECTION 1. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That all the provisions in favor of aliens, contained in the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," passed the 26th day of March, one thousand eight hundred and two, shall be, and hereby are extended to all aliens who may have come into this state, and become inhabitants thereof, at the close of the present session of the legislature.

20 Wend., 230.

May take by devise or descent. § 2. *And be it further enacted,* That all persons authorized to acquire real estate by purchase by this act, or the act hereby extended, may also take and acquire by devise or descent: *Provided,* That nothing herein shall be construed to confer on them any other rights appertaining to natural born citizens, except those of taking, holding, and disposing of real property within this state.

12 N. Y., 376; 2 Hill, 67.

L. 1819, Chap. 25—An act declaratory of the construction and intent of the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," and to amend the same.

Effect of former act. SECTION 1. *Be it enacted and declared by the People of the State of New York, represented in Senate and Assembly,* That all and every the deed and

deeds, conveyance and conveyances, of or for any lands or tenements within this state, made to any alien or aliens, in pursuance of the act, entitled "An act to enable aliens to purchase and hold real estates within this state, under certain restrictions therein mentioned," passed the 2d day of April, one thousand seven hundred and ninety-eight, so far forth as relates to any question or plea of alienism, shall be deemed and adjudged valid and effectual to vest all and singular the lands and tenements described in, and intended to be conveyed by such deed or deeds, conveyance or conveyances, in the several grantees therein named, and their heirs and assigns, according to the nature of the estates thereby created, and in such manner as to authorize the said several grantees, and their respective heirs and assigns, being aliens, effectually to give, devise, grant, sell and convey the same, in fee or otherwise, to any other alien or aliens, not being the subject or subjects of some sovereign state or power, then at war with the United States of America, any thing in the said act contained, or any plea of alienism to the contrary notwithstanding.

7 N. Y., 305; 13 Wend., 458.

Certain aliens may take mortgages. § 2. *And be it further enacted,* That all and every the mortgage or mortgages of and upon any of the said lands and tenements, which have been or may hereafter be taken by the said grantees, or any of them, in order to secure the whole or any part of the consideration money arising on any sale or sales of the said lands and tenements, or any of them, shall be in like manner valid and effectual; and it shall and may be lawful for the mortgagees therein named, or any of them, their or any of their heirs or assigns, to re-purchase any of the said lands and tenements, on any sale or sales to be thereof made by virtue of any power contained or to be contained in any such mortgages, or by virtue of any judgment, order or decree of any court of law or equity, rendered or made, or to be rendered or made, in order to enforce the payment of such consideration money, or any part thereof, and to hold the same lands and tenements in like manner, and with the like authority, as is herein before expressed.

L. 1830, Chap. 171—An act to enable resident aliens to hold and convey real estate.

Aliens may take and hold lands; to file deposition. SECTION 1. Any resident alien who has purchased and taken a conveyance for any lands or real estate within this state, before making and filing the deposition or affirmation in writing, required by the provisions of title one of chapter one of the second part of the Revised Statutes of this state, may continue to hold such lands and real estate, in the same manner and with the like effect as he would have done if such purchase had been made, and conveyance taken after the making and filing of the deposition or affirmation in the said title and chapter specified: But to entitle any such alien to the benefits of the provisions of this section, such alien, at the expiration of one year from the passing of this act, shall have made and filed such deposition or affirmation as is required by the provisions of the aforesaid title; otherwise this section shall be of no force or effect whatever, as it regards such alien.

10 Wend., 379; 7 Lans., 236; 66 Barb., 374.

Grants, contracts, etc. § 2. Every grant, contract or mortgage, heretofore made and executed by any such alien, to and with any citizen of the United States, shall be deemed and considered as valid and effectual, as if such grant, contract or mortgage, had been made by a citizen of this state.

4 Edw., 395.

L. 1843, Chap. 87—An act to enable resident aliens to hold and convey real estate.

Title confirmed in certain cases. SECTION 1. Any naturalized citizen of the United States, who may have purchased and taken a conveyance for any lands or real

estate within this state, or to whom any such lands or real estate may have been devised, or to whom they would have descended if he had been a citizen at the time of the death of the person last seized, before he was qualified to hold them by existing laws, may continue to hold the same in like manner as if he had been a citizen at the time of such purchase, devise or descent cast; and all conveyances, by deed or mortgage, heretofore made by such naturalized citizen, are hereby confirmed.

3 Sandf. S. C., 79; 10 Wend., 9; 39 N. Y., 339.

Titles of resident aliens for five years. § 2. Any alien, who, being at the time an actual resident of the United States, may have heretofore purchased and taken a conveyance of any such lands or real estate, or to whom they may have been devised, or to whom they would have descended if he had been a citizen at the time of the death of the person last seized; and any such alien who may hereafter purchase and take a conveyance of any such lands or real estate, or to whom the same may be devised, or to whom the same would descend if he were a citizen, and who have already filed or shall within one year from the passage of this act, or within one year from the time of such purchase, devise or descent cast, file the deposition or affirmation specified in the fifteenth section, article second, chapter first, part second, of the Revised Statutes, may hold or convey such land or real estate during the term of five years from the passage of this act, in the same manner as if he were a citizen of this state. And any conveyances by deed or mortgage heretofore made by any such alien, is hereby declared in like manner valid.

Saving clause. § 3. This act shall not affect the rights of the state in any case in which proceedings for escheat have been instituted; nor the rights of any person or persons, whose interest may have become vested in any such lands or real estate.

Rights of native Indians. § 4. Any native Indian may, after the passage of this act, purchase, take, hold and convey lands and real estate in this state, in the same manner as a citizen: and whenever he shall have become a freeholder, to the value of one hundred dollars, he shall be liable on contracts, and subject to taxation and to the civil jurisdiction of the courts of law and equity of this state, in the same manner and to the same extent as a citizen thereof.

Real estate. § 5. The words "real estate," as used in this act, comprehend equitable as well as legal estate.

L. 1845, Chap. 115 — An act to enable resident aliens to hold and convey real estate, and for other purposes.

Aliens who acquired before filing deposition. SECTION 1. Any alien resident of this state, who has heretofore purchased and taken, or may hereafter purchase and take a conveyance of any lands or real estate within this state, or to whom any lands or real estate has been or may hereafter be devised, before making and filing in the office of secretary of state, the deposition or affirmation in writing, specified in the fifteenth section of the first title in the first chapter of the second part of the Revised Statutes, may, on making and filing such deposition or affirmation, hold the real estate granted, conveyed or devised to such alien, in the same manner and with the like effect as if such alien at the time of such grant, conveyance, or devise, were a citizen of the United States.

5 N. Y., 136; 28 Barb., 323; 2 Hill, 67; 42 N. Y., 177; 13 Hun, 303; 81 N. Y., 131.

Rights of the wives of aliens. § 2. The wife of any alien resident of this state, who has heretofore taken by conveyance, grant or devise, any real estate, and become seized thereof, and who has died before the passing of this act, and the wife of any alien resident of this state, who may hereafter take by conveyance, grant or devise, any real estate within this state, shall be entitled to dower

therein, whether she be an alien or citizen of the United States; but no such dower shall be claimed in lands granted or conveyed by the husband before this act shall take effect.

26 How. Pr. R., 472, 474; 21 Wend., 59; 20 Wend., 338; 16 Wend., 617; 10 Wend., 379; 1 Abb. Ct. App. Dec., 272; 42 N. Y., 181.

Right of dower of alien woman. § 3. Any woman being an alien, who has heretofore married, or who may hereafter marry a citizen of the United States, shall be entitled to dower in the real estate of her husband, within this state, as if she were a citizen of the United States.

1 Abb. Ct. App. Dec., 273; 3 Denio, 229; 21 Wend., 59; 16 Wend., 617; 10 Wend., 379; 26 How. Pr. R., 472, 474; 42 N. Y., 182; 15 Hun, 399; 57 How. Pr. R., 229.

Heirs or devisees of aliens to inherit; proviso as to male heirs or devisees. § 4. If any alien resident of this state, or any naturalized or native citizen of the United States, who has purchased and taken, or hereafter shall purchase and take, a conveyance of real estate within this state has died, or shall hereafter die, leaving persons who, according to the statutes of this state, would answer the description of heirs of such deceased person, or of devisees, under his last will, and being of his blood, such persons so answering the description of heirs, or of such devisees of such deceased person, whether they are citizens or aliens, are hereby declared and made capable of taking and holding, and may take and hold, as heirs, or such devisees of such deceased person, as if they were citizens of the United States, the lands and real estate owned and held by such deceased alien or citizen at the time of his decease. But if any of the persons so answering the description of heirs, or of such devisees, as aforesaid, of such deceased person, are males of full age, they shall not hold the real estate hereby made descendible or devisable to them as against the state unless they are citizens of the United States, or in case they are aliens, unless they make and file in the office of the secretary of state the deposition or affirmation mentioned in the first section of this act. [*Thus amended by L. 1875, ch. 38.*]

42 N. Y., 182; 5 Denio, 550; 80 N. Y., 171; 36 Hun, 277, 476; 40 Hun, 85.

Effect of conveyances by aliens who die. § 5. Any resident alien of this state who has purchased and taken a conveyance, or who shall purchase and take a conveyance of real estate within this state, and has died or shall die after having devised or conveyed the same, the devisee or grantee of such real estate may take and hold, and is hereby declared capable of holding the real estate so granted or devised, whether such grantee or devisee be a citizen or alien, according to the nature and effect of such grant or devise; but no devisee or grantee of full age who is an alien, shall hold such real estate as against the state, unless he make and file in the office of the secretary of state the deposition or affirmation mentioned in the first section of this act.

Aliens who file depositions may grant and devise real estate. § 6. Any resident alien who has purchased and taken by deed or devise any real estate within this state, or who may hereafter purchase and take by deed or devise any real estate within this state, and who has made and filed, or shall make and file in the office of the secretary of state, the deposition in the first section of this act mentioned, may grant and devise such real estate to any citizen of the United States, or to any alien resident of this state, in the same way and to the like effect, and to and for the same purposes as if such alien were a citizen of the United States; but no resident male alien of full age shall hold any lands so granted or devised to him as against the state, unless he make and file in the office of secretary of state the deposition or affirmation in the first section of this act mentioned.

5 Denio, 545; 9 Hun, 511.

Alien women may hold land by the will of their husbands. § 7. Every woman being an alien and resident of this state, is hereby declared to be, and is hereby made capable of taking and holding real estate under the will of her husband, or of any person capable of devising any real estate, and she is hereby declared to be and is hereby made capable of executing any and every power in respect to the real

estate devised to her, and which may lawfully be created, the same as if she were a citizen of the United States.

Marriage settlements. § 8. Every woman being an alien and resident of this state, is hereby declared to be and is made capable of taking any and every beneficial interest or estate in any lands or real estate within this state, which has been or may be created in her favor, or for her benefit in any marriage settlement, or in any will or devise made by her husband, or of any person capable of devising real estate, subject to all the provisions of law, regulating the creation of uses and trusts.

Former devises, grants, etc., by aliens, confirmed. § 9. Every grant, devise, demise, lease or mortgage of any lands within this state, heretofore made and executed in due form of law by an alien to any citizen of this state, or to any resident alien capable of taking and holding any real estate, or any beneficial interest therein within this state, or which may hereafter be made and executed by any resident alien capable of taking and holding real estate within this state, to any citizen of this state, or to any resident alien capable of taking and holding real estate, or any beneficial interest therein; and all rents reserved or hereafter reserved on any such lease or demise, and all lawful covenants and conditions in any such lease or demise, are hereby confirmed, and shall be deemed and taken to be as valid and effectual, as if made by or between citizens of this state.

Effect of filing alien depositions. § 10. All proceedings to recover lands held by a resident alien, by reason of his alienage, shall be suspended, on his filing in the office of the secretary of state the deposition or affirmation mentioned in the first section of this act, and on payment of the costs and charges of such proceedings, up to the time of serving a certified copy of such deposition or affirmation on the attorney-general of this state.

Saving clause. § 11. This act shall not affect the rights of this state in any case in which proceedings for escheat have been or shall before the making and filing the deposition or affirmation in the first section of this act mentioned, be commenced or the rights of any person or persons whose interests may have become vested in any such lands or real estate; but all proceedings commenced or hereafter commenced to recover lands, as for an escheat, held by resident, alien, shall be subject to the provisions of the last preceding section.

Duties of aliens who hold real estate. § 12. Every alien who shall hold any real estate by virtue of any of the foregoing provisions, shall be subject to duties, assessments, taxes and burthens, as if he were a citizen of the United States; but shall be incapable of voting at any election, or of being elected or appointed to any office, or of serving on any jury.

40 How. Pr. R., 434.

Revised Statutes. § 13. The provisions of section nineteen, of title one, chapter first, part second of the Revised Statutes, are hereby made applicable to this act, and all the provisions of title twelve, chapter nine, part first of the Revised Statutes, inconsistent with the provisions of this act, are hereby repealed.

[Section 14 repeals prior acts.]

Saving clause. § 15. Nothing herein contained shall prejudice the rights bona fide acquired by purchase or descent, without notice before this act shall take effect.

L. 1857, Chap. 576—An act to extend the provisions of chapter one hundred and fifteen of the laws of eighteen hundred and forty-five, in relation to aliens.

Depositions. SECTION 1. The several provisions of the act entitled "An act to enable resident aliens to hold and convey real estate, and for other purposes," passed thirtieth of April, eighteen hundred and forty-five, are hereby extended and applied to any such grant, demise, devise, lease or mortgage which are enu-

merated in said act, and which have been heretofore made, and shall be as effectual to pass the title thereto as though the persons by, from, or through whom the title shall have so passed, had been citizens of the United States, and as though the several provisions of said act had been as they hereby are re-enacted. The deposition or affirmation required to be made in the first section of the act hereby extended, shall be made and filed in the office of the secretary of state, within two years from the time when this act shall take effect, and if any person who, according to the provisions of the act hereby re-enacted and extended, is required to make and file in the office of the secretary of state the deposition or affirmation herein mentioned, shall neglect or omit to make and file the same within the time herein limited, he or she so neglecting or omitting to make and file such deposition or affirmation, shall not be entitled to the benefit of this act.

•L. 1868, Chap. 513—An act to confirm the title of certain persons to real estate questioned by reason of the alienism of former owners.

Derivation of title, etc. SECTION 1. The title of any citizen or citizens of this state, to any land or lands within this state, and now in the actual possession of such citizen or citizens, shall not be questioned or impeached by reason of the alienism of any person or persons, from or through whom such title may have been derived: provided, however, that nothing in this act shall affect the rights of the state in any case in which proceedings for escheat have been instituted.

L. 1872, Chap. 120—An act to authorize the descent of real estate to female citizens of the United States and their descendants, notwithstanding their marriage with aliens.

Marriage by a woman who is a citizen, with an alien, not to affect descent of her real property. SECTION 1. Real estate in this state now belonging to, or hereafter coming or descending to, any woman born in the United States, or who has been otherwise a citizen thereof, shall, upon her death, notwithstanding her marriage with an alien and residence in a foreign country, descend to her lawful children of such marriage, if any, and their descendants, in like manner, and with like effect, as if such children or their descendants were native born or naturalized citizens of the United States. Nor shall the title to any real estate now owned by, or which shall descend, be devised or otherwise conveyed to such woman, or to her lawful children, or to their descendants, be impaired or affected by reason of her marriage with an alien, or the alienage of such children or their descendants.

L. 1872, Chap. 141—An act to confirm the title of certain persons to real estate, questioned by reason of alienage of former owners.

Titles not to be impeached by reason of alienage. SECTION 1. The title of any citizen or citizens of this state to any lands within this state shall not be questioned or impeached by reason of the alienage of any person or persons, from or through whom such title may have been derived. Provided, however, that nothing in this act shall affect the rights of the state in any case in which proceedings for escheat have been instituted.

Saving clause. § 2. Nothing in this act shall affect or impair the right of any heir, devisee, mortgagee or creditor, by judgment or otherwise.

L. 1872, Chap. 358—An act to confirm the title of citizens of this state to lands for which they have heretofore taken conveyances from aliens.

Title of citizens not to be impeached by alienage of grantors; not to affect rights of state in cases pending. SECTION 1. The title of any citizen or citizens of this state to any

land or lands within this state, which may have heretofore been purchased by any such citizen or citizens from any alien or aliens, and for which a conveyance has been heretofore taken by any such citizen or citizens from any alien or aliens, shall not in any manner be questioned or impeached by reason or on account of the alienage of the person or persons from whom such conveyance shall have been taken, or by reason of any devise of any such land or lands to any such person or persons, in any last will and testament being inoperative or void on account of the alienage of such person or persons; but all devises of land or lands heretofore made by any last will and testament to any alien or aliens from whom a conveyance of such land or lands so devised shall heretofore have been taken by any citizen or citizens of this state, are hereby declared to be valid and effectual, so far that the title of such citizen or citizens to such land or lands shall not be affected by any invalidity of any such devise; provided, however, that nothing in this act contained shall affect the rights of this state in any case in which proceedings for escheat have been already instituted prior to the first day of January, one thousand eight hundred and seventy-two.

L. 1874, Chap. 261 — An act to amend an act entitled “An act to enable resident aliens to hold and convey real estate, and for other purposes,” passed April thirty, eighteen hundred and forty-five.

[Section 1 amends L. 1845, ch. 115, § 4, and was amended by L. 1875, ch. 38.]

Repeal; proviso; record of will, its effect. § 2. All acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed, provided, however, that nothing herein contained shall be taken or construed to affect any grant of land heretofore made by this state; and provided further that nothing in this act contained shall be taken or construed to affect the title to any land or lands which may have been heretofore derived through any devise, grant, gift or purchase prior to the passage of this act, or to give any person not heretofore entitled thereto under the laws of this state any right, title or interest as against any such devisee, grantee or purchaser, or any right to impeach or in any manner call in question the validity of any will of the person so dying seized as aforesaid, and it is hereby declared that the record of any such will in the office of the surrogate of any county in this state shall be conclusive evidence of its validity against any and all persons claiming or to claim under this act.

L. 1875, Chap. 336 — An act to confirm the title of certain persons to real estate, questioned by reason of alienage of former owners.

Title of citizen not impeached for alienage; proviso. SECTION 1. The title of any citizen or citizens of this state to any lands within this state, shall not be questioned or impeached by reason of the alienage of any person or persons, from or through whom such title may have been derived. Provided, however, that nothing in this act shall affect the rights of the state, in any case in which proceedings for escheat have been instituted.

Rights of heir, etc., not affected. § 2. Nothing in this act shall affect or impair the right of any heir, devisee, mortgagee, or creditor, by judgment or otherwise.

L. 1877, Chap. 111 — An act to confirm the title of certain persons to real estate questioned by reason of alienage of former owners.

Confirmation of rights, etc.; proceedings for escheats not affected. SECTION 1. The right, title or interest of any citizen or citizens of this state in or to any lands within this state now held or hereafter acquired shall not be questioned or impeached by the reason of the alienage of any person or persons from or through whom such title may have been derived; provided, however, that nothing in this act shall affect the rights of the state in any case in which proceedings for escheat have been instituted.

Rights of certain persons not affected. § 2. Nothing in this act shall affect or impair the right of any heir, devisee, mortgagee or creditor by judgment or otherwise.

TITLE 2.

TITLE II.

Of the Nature and Qualities of Estates in Real Property, and the Alienation thereof.

ART. 1.—Of the creation and division of estates.

ART. 2.—Of uses and trusts.

[Supplementary Article.]

ART. 2^A.—Acts relating to trusts of real and personal property.]

ART. 8.—Of powers.

ART. 4.—Of alienation by deed.

ARTICLE FIRST.

OF THE CREATION AND DIVISION OF ESTATES.

- SEC. 1. Enumeration of estates in land.
2. Estates of inheritance, a fee simple, when a fee simple absolute.
 - 3 & 4. Estates tail abolished and to be fees simple; remainders thereon, when valid.
 5. What to be estates of freehold, chattels real and chattel interests.
 6. Estates for life of third person, when freehold, when chattels real.
 7. Division of estates into those in possession and those in expectancy
 8. Definition of those estates respectively.
 9. Enumeration of estates in expectancy.
 10. Definition of a future estate.
 11. When a future estate is a remainder.
 12. Definition of a reversion.
 13. When future estates are vested, when contingent.
 14. Certain future estates void; when power of alienation deemed suspended.
 15. How long power of alienation may be suspended.
 16. In certain case a contingent remainder in fee may be created.
 17. Limitation of successive estates for life.
 18. Remainders upon estates for life of third person.
 19. When remainder to take effect, if estate be for life of more than two persons
 20. Contingent remainder on a term for years.
 21. Estates for life, as remainders, on a term for years.
 22. Meaning of "heirs" and "issue" in certain remainders.
 23. Limitations herein prescribed, to apply to chattel interests in lands.
 24. Remainders, future and contingent estates, how created.
 25. Two or more future estates, in the alternative, may be created.
 26. Future estates not to be void on ground of improbability, etc.
 27. Remainder upon a contingency; its effect.
 28. Heirs of a tenant for life, when to take as purchasers.
 29. Construction of certain remainders.
 - 30 & 31. In what cases posthumous children to take, or defeat, future estates
 32. Expectant estates not to be defeated by owners of precedent estate, etc.
 33. But such estates may be defeated by means provided by the grantor.
 34. Remainder not to be defeated by termination of precedent estate.
 35. Expectant estates descendible, devisable and alienable.
 36. Limitations on the disposition of future profits of lands.
 37. Accumulations of profits of land, how and for whom may be directed.
 38. Other directions for accumulation, when void in part, when wholly void.
 39. When profits, etc., may be applied to education, etc., of infants.
 40. To whom rents and profits of lands, in certain cases to belong.
 41. What deemed the time of creation of expectant estates.
 42. Expectant estates not herein enumerated, abolished.
 43. Nature, etc., of estates in severalty, joint tenancy and in common.
 44. What to be deemed estates in common, what in joint tenancy.

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Enumera-
tion of es-
tates in
land.

SECTION 1. Estates in lands are divided into estates of inheritance, estates for life, estates for years, and estates at will and by sufferance.

53 N. Y., 199; 43 N. Y., 465; 41 N. Y., 66; 11 N. Y., 494; 8 N. Y., 52; 26 Barb., 210; 22 Barb., 402; 31 N. Y., 9; 21 Hun, 251; 11 Daly, 94; 37 Hun, 14; 41 Hun, 186.

§ 2. Every estate of inheritance, notwithstanding the abolition of tenures, shall continue to be termed a fee simple, or fee; and every such estate, when not defeasible or conditional, shall be termed a fee simple absolute, or an absolute fee.

ART. 1.

What estate a fee simple.
28 Barb., 339; 1 & C., 556.

Barb., 576; 49 Barb., 56; 6 T.

§ 3. All estates tail are abolished; and every estate which would be adjudged a fee tail, according to the law of this state, as it existed previous to the twelfth day of July, one thousand seven hundred and eighty-two, shall hereafter be adjudged a fee simple; and if no valid remainder be limited thereon, shall be a fee simple absolute.

Estates tail abolished. Their nature declared.
6 N. Y., 410, 421; 2 N. Y., 387, 387; 6 De-Hun, 475; N. Y., 511.

[1 R. L., 52, § 1.]

§ 4. Where a remainder in fee shall be limited upon any estate, which would be adjudged a fee tail, according to the law of this state, as it existed previous to the time mentioned in the last section, such remainder shall be valid as a contingent limitation upon a fee, and shall vest in possession, on the death of the first taker, without issue living at the time of such death.

Certain remainders valid.
5 Denio, 35; 2 Denio, 9, 338; 92 N. Y., 446, 466; 99 N. Y., 511.

§ 5. Estates of inheritance and for life, shall continue to be denominated estates of freehold; estates for years, shall be chattels real; and estates at will or by sufferance shall be chattel interests, but shall not be liable as such to sale on executions.

228; 11 N. Y., 498; 8 N. Y., 52; 25 Barb., 108; 17 Barb., 396; 12 Barb., 481; 11 Barb., 499; 207, 613; 1 E. D. Smith, 333; 14 Barb., 223; 63 N. Y., 199; 43 N. Y., 465; 6 T. & C., 551; 70 85 Hun, 180; 41 Hun, 186.

Freeholds; chattels real; chattel interests.
52 Barb., 389; 4 Hun, 2 Barb., N. Y., 615; 41 Hun, 186.

§ 6. An estate during the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee, but after his death it shall be deemed a chattel real.

nio; 514; 37

§ 7. Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy.

Ch., 343; 40 Barb., 495; 49 id., 56; 4 Lans., 505; 40

§ 8. An estate in possession, is where the owner has an immediate right to the possession of the land. An estate in expectancy, is where the right to the possession is postponed to a future period.

495; 49 Barb., 56;

§ 9. Estates in expectancy are divided into,

1. Estates commencing at a future day, denominated future estates: and

2. Reversions.

499; 2 Abb. Ct. App. Dec., 178; 6 T. & C., 556; 4 Hun, 291; 11 N. Y., 121; 49 Barb., 56; 68 N. Y., 227; 12 Hun, 604; 15 W. D., 148; 97 N. Y., 449, 471; 84 N. Y., 257.

§ 10. A future estate, is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate, created at the same time.

495; 11 N. Y., 121; 2 Abb. Ct. App. Dec., 178; 4 Lans., 505; 28 Hun, 603; 40 Hun, 357, 449;

§ 11. Where a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

31 Barb., 562; 5 Paige, 466; 40 Barb., 495; 4 Lans., 505; 68 N. Y., 227; 12

§ 12. A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised.

2 Abb. Ct. App.

When they are remainders.
6 N. Y., 380; Hun, 604.

Reversions.
13 N. Y., 121; 4 Lans., 505; Dec., 178.

TITLE 2.

Vested and
contingent
future es-
tates.

1 Lans., 366;
8 Bosw., 490;
4 N. Y. S. C.
R. (T. & C.),
82; 18 N.

Y., 418; 6
Barb., 309;
49 id., 56; 1
Hun., 354; 52
N. Y., 118, 123;
41 N. Y., 81;
68 N. Y., 41;
7 Hun., 151; 8
Hun., 271; 17
Hun., 235; 19
Hun., 112; 16
Abb. N. C., 264;
2 Dem., 438;
40 Hun., 449,
452; 85 N. Y.,
81; 96 N.
Y., 201, 213;
97 N. Y., 449,
471.

Void future
estates.

Suspend-
ing power
of aliena-
tion.

How long
it may be
suspended.

Contingent
remainder
in fee.

3 N. Y. S.
C. R. (T. &
C.), 197; 26
Barb., 253;
1 Sandf.
Ch., 178; 42
Barb., 166;

Limitation
of succes-
sive estates
for life.

36 N. Y.,
543; 47
Barb., 307;

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41 N. Y.,
347; 9 N. Y.,
408; 8
Barb., 538;

Remainder
upon cer-
tain estates
for life.
47 Barb.,
307; 24 N.
Y., 9, 14; 98
N. Y., 330.

§ 13. Future estates are either vested or contingent. They are vested, when there is a person in being, who would have an immediate right to the possession of the lands, upon the ceasing of the intermediate or precedent estate. They are contingent, whilst the person to whom, or the event upon which they are limited to take effect, remains uncertain.

§ 14. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation for a longer period than is prescribed in this article. Such power of alienation is suspended, when there are no persons in being, by whom an absolute fee in possession can be conveyed.

4 N. Y. S. C. R. (T. & C.), 82; 1 Lans., 364; 47 Barb., 307; 47 How. Pr. R., 328; 9 N. Y., 403; 6 N. Y., 467; 5 N. Y., 413; 31 Barb., 336; 30 Barb., 321; 10 Barb., 358; 9 Barb., 344; 8 Barb., 28; 7 Barb., 592; 5 Barb., 101; 4 Barb., 89; 3 Barb., 244; 1 Denio, 57; 26 Wend., 21, 236; 24 Wend., 661; 20 Wend., 564; 18 Wend., 257; 16 Wend., 61, 324; 14 Wend., 268; 9 Paige, 110, 521; 8 Paige, 106, 308, 485; 7 Paige, 230, 534; 5 Paige, 172, 318, 602; 4 Paige, 342; 4 Sandf. S. C., 538; 33 N. Y., 509; 47 Barb., 307; 4 Hun., 291; 31 N. Y., 574; 15 Abb. N. C., 299; 4 Redf., 278; 28 Hun., 578; 32 Hun., 189; 39 N. Y., 225; 92 N. Y., 539; 96 N. Y., 201; 98 N. Y., 330.

§ 15. The absolute power of alienation, shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate, except in the single case mentioned in the next section.

4 N. Y. S. C. R. (T. & C.), 82; 3 id., 197; 43 N. Y., 374, 382; 41 N. Y., 334; 29 N. Y., 39, 71; 24 N. Y., 9, 12; 59 Barb., 78; 52 Barb., 611; 47 Barb., 360, 367; 1 Lans., 364; 9 N. Y., 403; 6 N. Y., 467, 510; 7 N. Y., 548; 5 N. Y., 413; 31 Barb., 336; 17 Barb., 25; 10 Barb., 338; 9 Barb., 344; 6 Barb., 20; 7 Barb., 592; 5 Barb., 438; 16 Wend., 61; 14 Wend., 265; 13 Wend., 441; 5 Denio, 646; 1 Denio, 449; 5 Paige, 220; 4 Sandf. Ch., 414, 525, 528; 2 Sandf. Ch., 56; 2 Duer, 87; 5 Sandf. S. C., 174, 363; 4 Sandf. S. C., 539; 34 N. Y., 609; 31 N. Y., 19; 47 Barb., 307; 42 Barb., 166; 1 Hun., 71; 1 Tuck., 79; 53 N. Y., 192, 198; 1 T. & C., 388; 56 N. Y., 220; 53 N. Y., 192; 6 Hun., 49; 49 How. Pr., 229; 45 How. Pr., 160; 59 N. Y., 426; 64 N. Y., 651; 4 Abb. N. C., 268; 67 N. Y., 348; 52 How. Pr., 1; 53 id., 436; 11 Hun., 245; 70 N. Y., 615; 51 How. Pr., 276; 14 Hun., 529; 70 N. Y., 512; 11 Hun., 147; 3 Redf., 235; 8 Abb. N. C., 102; 8 Daly, 454; 64 N. Y., 566; 16 Hun., 268; 64 N. Y., 566; 72 N. Y., 378; 23 W. D., 205; 23 W. D., 468, 563; 2 Dem., 446; 25 Hun., 6; 28 Hun., 603; 29 Hun., 20; 32 Hun., 184; 37 Hun., 19; 41 Hun., 345; 80 N. Y., 320; 95 N. Y., 598; 96 N. Y., 20; 97 N. Y., 36, 421, 460; 98 N. Y., 311, 480, 568; 99 N. Y., 606; 102 N. Y., 161; 104 N. Y., 45; 105 N. Y., 68; 43 Hun., 501; 45 Hun., 590; 24 W. D., 35; 4 N. Y. St. Rep., 670; 18 Abb. N. C., 268.

§ 16. A contingent remainder in fee, may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, shall die under the age of twenty-one years, or upon any other contingency, by which the estate of such persons may be determined before they attain their full age.

§ 17. Successive estates for life shall not be limited, unless to persons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto, shall be void, and upon the death of those persons, the remainder shall take effect, in the same manner as if no other life estates had been created.

§ 18. No remainder shall be created upon an estate for the life of any other person or persons than the grantee or devisee of such estate, unless such remainder be in fee; nor shall a remainder be created upon such an estate in a term for years, unless it be for the whole residue of such term.

§ 19. When a remainder shall be created upon any such life estate, and more than two persons shall be named, as the persons during whose lives the life estate shall continue, the remainder shall take effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced.

. Barb., 307; 1 Bradf., 187; 15 Abb. N. C., 299; 28 Hun, 603; 98

§ 20. A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which it is limited, be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof.

§ 21. No estate for life, shall be limited as a remainder on a term of years, except to a person in being, at the creation of such estate.

§ 22. Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue," shall be construed to mean heirs or issue, living at the death of the person named as ancestor.

3 Robt., 401; 13 N. Y., 273; 3 Barb., 287; 3 Wend., 521; 3 Paige, 30; 27 How. Pr. R., 279;

§ 23. All the provisions contained in this article, relative to future estates, shall be construed to apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years, shall not be suspended for a longer period than the absolute power of alienation can be suspended, in respect to a fee.

§ 24. Subject to the rules established in the preceding sections of this article, a freehold estate as well as a chattel real, may be created; to commence at a future day; an estate for life may be created, in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created expectant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this article.

§ 25. Two or more future estates, may also be created, to take effect in the alternative, so that if the first in order shall fail to vest, the next in succession shall be substituted for it, and take effect accordingly.

Y., 378; 2 Abb. Ct. App. Dec., 178; 2

§ 26. No future estate, otherwise valid, shall be void on the ground of the probability or improbability of the contingency on which it is limited to take effect.

§ 27. A remainder may be limited on a contingency, which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder shall be construed a conditional limitation, and shall have the same effect as such limitation would have by law.

Y., 561; 16 Hun, 71; 17 Hun, 215; 40

§ 28. Where a remainder shall be limited to the heirs, or heirs of the body of a person to whom a life estate, in the same premises, shall be given, the persons who, on the termination of the life estate, shall be the heirs, or heirs of the body of such tenant for life, shall be entitled to take as purchasers, by virtue of the remainder so limited to them. *Abolition of Rule in Shelley's Case.*

§ 29. When a remainder on an estate for life, or for years, shall not be limited on a contingency defeating or avoiding such prece-

ART. 1.

When remainder to take effect in certain cases.

47 Barb., 308; 46 N. Y., 330.

Contingent remainder on a term for years.

Remainder of estates for life.

24 N. Y., 9, 15

Meaning of "heirs" and

"issue" in certain remainders.

16 Hun, 71; 17 Hun, 215.

Limitations on chattels real.

3 Barb. Ch., 306; 5 Denio, 609; 3 Paige, 30.

Remainders future and contingent estates, how created.

3 Barb., 287; 7 Paige, 334; 40 Hun, 449, 452; 98

N. Y., 539, 549; 97 N. Y., 449.

Two or more future estates.

40 Barb., 496; 43 N. Dem., 433.

Certain future estates not to be void.

5 Paige, 463.

[725] Remainder upon a contingency.

68 N. Y., 227; 70 N. Hun, 449.

Heirs of a tenant for life, when to take as purchasers.

11 N. Y., 461; 4 Kent Com., 224; 46 Barb., 495.

Construction of

TITLE 2.

certain remainders.
4 Kent

Com., 224.

Posthumous children.

2 Barb., 248.

Id.

2 Barb., 248.

dent estate, it shall be construed as intended to take effect, only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

§ 30. Where a future estate shall be limited to heirs or issue, or children, posthumous children shall be entitled to take, in the same manner as if living at the death of their parents.

§ 31. A future estate depending on the contingency of the death of any person without heirs or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

Expectant estates not to be defeated, &c.
41 N. Y., 78;
15 W. D.,
148; 28 Hun,
608; 41 Hun,
130; 100 N. Y., 810.

§ 32. No expectant estate can be defeated or barred by any alienation, or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseisin, forfeiture, surrender, merger or otherwise.

When to be defeated.

47 N. Y.,

518; 2

Lans., 275;

6 N. Y. S.

C. R. (T. &

C.), 602; 4

Haw., 408;

10 Hun, 328.

§ 33. The last preceding section shall not be construed to prevent an expectant estate from being defeated in any manner, or by any act or means, which the party creating such estate shall, in the creation thereof, have provided for or authorized; nor shall an expectant estate thus liable to be defeated, be on that ground adjudged void in its creation.

Remainders not to be defeated in certain cases.

18 N. Y.,

418; 4 Abb.

Ct. App.

Dec., 224;

59 N. Y.,

119; 73 N.

Y., 280; 100

§ 34. No remainder, valid in its creation, shall be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder is limited to take effect; but should such contingency afterwards happen, the remainder shall take effect, in the same manner and to the same extent, as if the precedent estate had continued to the same period.

Qualities of expectant estates.

6 N. Y. S.

59 Barbour,

W. D., 148;

40 Hun, 257, 450;

41 Hun, 477;

96 N. Y., 313;

97 N. Y., 446;

94 N. Y., 257.

§ 35. Expectant estates are descendible, devisable and alienable, in the same manner as estates in possession.

Future profits of lands.

[726]

17 N. Y.,

567; 2

Barb., 248;

3 Barb. Ch., 92;

5 Paige, 480;

4 Paige, 328;

2 Sandf. Ch., 474.

C. R. (T. & C.), 556; 49 Barb., 54; 13 N. Y., 133; 31 Barb., 562; 7 Paige, 76; 45 Barb., 460; 84; 8 Bosw., 490; 2 Abb. Ct. App. Dec., 182; 4 Id., 226; 3 Hun, 519; 4 Hun, 408; 15

§ 36. Dispositions of the rents and profits of lands, to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this article, in relation to future estates in lands.

Accumulation of profits of lands.

1 Hun, 72;

17 Barb.,

25; 4 Paige,

328; 4

Sandf. S. C.,

442; 45 N.

Y., 445; 48

N. Y., 374;

35 N. Y.,

620; 5

Lans., 167;

4 N. Y. S.

C. R. (T. &

C.), 82; 64

N. Y., 566;

561; 1

Dem., 401;

3 Dem., 126;

26 Hun, 89;

28 Hun, 615;

§ 37. An accumulation of rents and profits of real estate, for the benefit of one or more persons, may be directed by any will or deed, sufficient to pass real estate, as follows:

1. If such accumulation be directed to commence on the creation of the estate, out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority;

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it shall commence within the time in this article permitted for the vesting of future estates and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority.

29 Hun, 20, 28; 92 N. Y., 508; 93 N. Y., 13, 403; 107 N. Y., 549.

§ 38. If, in either of the cases mentioned in the last section, the direction for such accumulation shall be for a longer term than during the minority of the persons intended to be benefited thereby, it shall be void as respects the time beyond such minority. And all directions for the accumulation of the rents and profits of real estate, except such as are herein allowed, shall be void.

Barb., 25; 4 Sandf. S. C., 442; 5 Paige, 480; 44 Barb., 576; 35 N. Y., 370, 620; 4 N. (T. & C.), 82; 8 Abb. N. C., 102; 8 Daily, 464; 28 Hun, 616; 29 Hun, 20; 92 N. Y., 508; 96 N. Y., 15; 107 N. Y., 549.

§ 39. Where such rents and profits are directed to be accumulated for the benefit of infants entitled to the expectant estate, and such infants shall be destitute of other sufficient means of support and education, the chancellor, upon the application of their guardian, may direct a suitable sum out of such rents and profits to be applied to their maintenance and education.

§ 40. When in consequence of a valid limitation of an expectant estate, there shall be a suspense of the power of alienation or of the ownership, during the continuance of which, the rents and profits shall be undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate.

372; 23 N. Y., 83; 15 N. Y., 324; 28 Barb., 143; 17 Barb., 84; 2 Barb. Ch., 518; 43 N. Y., 333; 41 Id., 340; 8 Redf., 253; Id., 449; 24 Hun, 1; 1 Dem., 404; 28 Hun, 603; 29 Hun, 20; 92 N. Y., 508, 520; 96 N. Y., 103, 106; 106 N. Y., 468.

§ 41. The delivery of the grant, where an expectant estate is created by grant; and where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

3 Barb., 387; 5 Sandf., 363; 8 Bosw., 475; 29 N. Y., 39, 71.

§ 42. All expectant estates, except such as are enumerated and defined in this article, are abolished.

§ 43. Estates, in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy and in common; the nature and properties of which respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter.

§ 44. Every estate granted or devised to two or more persons, in their own right, shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate, vested in executors or trustees as such, shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested, as to estates hereafter to be granted or devised.

(T. & C.), 569; 3 Hun, 519; 4 Hun, 289; 27 Barb., 272; 5 Johns. Ch. R., 431; 29 N. Y., 39, 72; 1 Hun, 390; 20 Hun, 382; 6 T. & C., 551; 70 N. Y., 616; 76 N. Y., 262; 13 Abb. N. C., 282; 15 Abb. N. C., 127; 28 Hun, 451; 37 Hun, 18; 43 Hun, 585; 45 Hun, 502; 88 N. Y., 92, 469; 92 N. Y., 152, 157, 446, 539.

[1 R. L., 54, §§ 6 and 7.]

ART. 2.

Other directions, when void in part. When wholly void.

2 Barb. Ch., 518; 17 Y. S. C. R., 96 N. Y., 15; 107 N. Y., 549.

Applications, profits, &c., to support, &c., of infants. 6 Paige, 136; 35 N. Y., 370; 1 Dem., 404; 3 Dem., 67.

In certain cases, who entitled to profits of land. 24 N. Y., 9, 13; 1 Hun, 423; 5 Lans., 167; 1 Lans., 333; 41 Id., 340; 8 Redf., 253; Id., 449; 24 Hun, 1; 1 Dem., 404; 28 Hun, 603; 29 Hun, 20; 92 N. Y., 508, 520; 96 N. Y., 103, 106; 106 N. Y., 468.

Expectant estates, when deemed created. Y., 39, 71.

Certain expectant estates abolished.

Estates in severalty, joint tenancy and in common. 9 Abb. Fr. R., N. S., 446.

[737] What to be in common, what in joint tenancy. 9 Abb. Fr. R., N. S., 446; 5 N. Y. S. C. R., 96 N. Y., 15; 107 N. Y., 549.

ARTICLE SECOND.

OF USES AND TRUSTS.

- Sec. 45. Uses and trusts, not herein authorized, abolished; estates in land, legal rights.
 46. Existing executed uses, confirmed as legal estates.
 47. Persons entitled to possession of lands, declared the legal owners thereof.
 48. Last section not to affect active trusts.
 49. No estate granted for the use of another, to vest in the trustees.
 50. Previous sections not to apply to resulting or implied or express trusts.
 51. Grant to one, for consideration paid by another, vests title in grantee.
 52. But trust to result in favor of creditors of person paying consideration.

TITLE 2.

- SEC. 53. Preceding 51st section not to extend to certain cases.
 54. Purchasers in good faith, not to be affected by implied trusts, etc.
 55. For what purposes express trusts may be created.
 56. Certain devises in trust, to be deemed powers.
 57. In certain cases, profits of land liable to creditors.
 58. Express trusts not before authorized, to be powers in trust.
 59. In such case, land to remain in and descend to persons entitled.
 60. Trustees under valid express trusts, to have whole estate.
 61. Qualification of last section.
 62. Estates, etc., not included in express trust, to remain in grantor.
 63. Powers of parties interested in certain trusts, over them.
 64. Conveyances not declaring trust, absolute in certain cases.
 65. Sales, etc., contrary to the trust expressed in instrument, void.
 66. Misapplication of money received by trustees, not to affect others.
 67. Estate of trustee to cease, when purpose of trust ceases.
 68. Disposition of trust, etc., on death of surviving trustee.
 69. When and how trustee may resign.
 70. When and how trustee may be removed.
 71. Appointment of trustees in place of those resigning or removed, etc.
 72. Three last sections applicable only to express trusts.

Certain
uses and
trusts abol-
ished.

§ 45. Uses and trusts, except as authorised and modified in this article, are abolished; and every estate and interest in lands, shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in this chapter.

3 Hun, 467; 35 N. Y., 86; 8 Bosw., 192; 9 Robt., 131; 7 Id., 105; 5 N. Y. S. C. R. (T. & C.), 600; 59 N. Y., 339; 3 Hun, 464; Id., 473; 59 N. Y., 434; 9 Hun, 176; 15 N. Y., 477; 19 N. Y., 403; 29 Barb., 657; 27 Barb., 372; 17 Barb., 105; 11 Barb., 407; 9 Barb., 340; 6 Barb., 484; 1 Denio, 442; 3 Sandf. S. C., 360; 24 Wend., 661; 18 How. Pr. R., 132; 31 N. Y., 18; 47 Barb., 259; 44 Barb., 676; 43 N. Y., 466; 53 N. Y., 352, 358; 57 N. Y., 76; 30 N. Y., 193; 16 J. & S., 70; 36 Hun, 263; 40 Hun, 91; 98 N. Y., 36, 300; 99 N. Y., 451; 26 Hun, 283.

Executed
uses, exist-
ing.

6 Barb., 484;
4 Denio,

Right to
possession
of land cre-
ates legal
ownership.

§ 46. Every estate which is now held as an use, executed under any former statute of this state, is confirmed as a legal estate.

§ 47. Every person, who, by virtue of any grant, assignment or devise, now is, or hereafter shall be entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest.

44 N. Y., 253; 43 N. Y., 496; 49 Barb., 134; 23 N. Y., 377; 10 N. Y., 271; 9 N. Y., 403; 7 N. Y., 570; 5 N. Y., 480; 3 N. Y., 535; 30 Barb., 330; 13 Barb., 92; 9 Barb., 519; 6 Barb., 484; 5 Barb., 190; 1 Barb., 33; 1 Barb. Ch., 20, 220; 2 Hill, 574, 491; 7 Paige, 524, 186-193; 4 Paige, 404; 3 Sandf. Ch., 296; 21 Wend., 147; 17 Johns. R., 360; 14 Wend., 190; 30 N. Y., 193; 47 Barb., 547; 7 Robt., 108; 1 Bosw., 141; Id., 186, 191; 36 Hun, 16; 24 Hun, 430; 25 Hun, 596; 106 N. Y., 415.

[1 R. L., 72, §§ 1, 2 and 3.]

Active
trusts not
affected by
last sec-
tion.

[798]

6 Barb.,
484; 4

Paige, 339;
R., 494; 4

Trustees of
estate for
use of an-
other, take
no interest.

23 N. Y.,
377; 10 N.

Y., 271; 7 N.

Y., 570; 5 N.

Y., 480; 3 N.

Y., 535; 26

Barb., 239;
N. Y., 496;

70 N. Y., 615;

§ 48. The last preceding section shall not divest the estate of any trustees, in any existing trust, where the title of such trustees, is not merely nominal, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust.

4 Denio, 399; 7 Paige, 182; 44 N. Y., 258; 8 Bosw., 186, 191; 55 N. Y., 220; 55 How. Pr. Abb. N. C., 317; 36 Hun, 15.

§ 49. Every disposition of lands, whether by deed or devise hereafter made, shall be directly to the person in whom the right to the possession and profits, shall be intended to be invested, and not to any other, to the use of, or in trust for, such person; and if made to one or more persons, to the use of, or in trust for, another, no estate or interest, legal or equitable, shall vest in the trustee.

479; 6 Barb., 98; 1 Denio, 57; 9 Barb., 516; 30 N. Y., 193; 41 Barb., 69; 36 Barb., 44; 43 Hun, 299; 49 Barb., 134; 1 Bosw., 141; 8 Bosw., 186, 191; 7 Robt., 108; 6 T. & C., 551; 16 Abb. N. C., 23, note; 106 N. Y., 415.

[1 R. L., 72, §§ 1, 2 and 3.]

§ 50. The preceding sections in this article shall not extend to trusts arising, or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts, as are herein-after authorized and defined.

9 Barb., 589; 4 Denio, 439; 16 Johns. R., 197; 5 Johns. Ch. R., 1; 3 Paige, 390; 4 Sandf. N. Y., 596; 58 Barb., 262; 2 Robt., 131; 1 Hun, 499; 52 N. Y., 251; 57 N. Y., 545; 5 Hun, C., 342; 17 J. & S., 317; 14 Abb. N. C., 13.

§ 51. Where a grant for a valuable consideration shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

52 N. Y., 251, 260; 48 N. Y., 218; 46 N. Y., 16; 59 Barb., 638; 7 Bosw., 491; 39 N. Y., 73; 29 N. Y., 598, 610; 15 N. Y., 478; 10 N. Y., 271; 29 Barb., 434; 16 Barb., 376; 12 Barb., 653; 10 Barb., 102; 6 Barb., 484; 5 Barb., 57; 2 Edw., 619; 14 How. Pr. R., 11; 8 Paige, 325; 2 Barb. Ch., 582; 39 N. Y., 59; 47 Barb., 544; 39 Barb., 623; 5 J. & S., 256; 3 T. & C., 26; 59 N. Y., 342; 80 N. Y., 538; 14 Abb. N. C., 13; 16 Abb. N. C., 25, note; 17 J. & S., 312; 28 Hun, 492; 89 N. Y., 251, 255; 98 N. Y., 40; 25 Hun, 596; 103 N. Y., 307.

[1 R. L., 74, § 4.]

§ 52. Every such conveyance shall be presumed fraudulent, as against the creditors, at that time, of the person paying the consideration; and where a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

[The same.]

22 N. Y., 566; 15 N. Y., 478; 10 N. Y., 271; 31 Barb., 394; 29 Barb., 484; 12 Barb., 653; 6 Barb., 484; 4 Denio, 442; 1 Johns. Ca., 163; 3 Johns. R., 216; 11 Johns. R., 91; 13 Johns. R., 438; 16 Johns. R., 197; 1 Johns. C. R., 582; 2 Johns. Ch. R., 406; 3 Paige, 478; 4 Paige, 578; 10 Paige, 568; 18 Wend., 257; 8 Barb., 555; 46 N. Y., 18; 39 N. Y., 73; 29 N. Y., 610; 60 Barb., 68; 59 Barb., 45; 7 Bosw., 491; 3 T. & C., 26; 59 N. Y., 342; 3 T. & C., 21, 445; 3 Hun, 692; 6 T. & C., 142; 9 Hun, 161; 22 Hun, 444; 23 W. D., 477; 41 Hun, 551; 98 N. Y., 47; 101 N. Y., 509.

§ 53. The provisions of the preceding fifty-first section shall not extend to cases, where the alienee named in the conveyance, shall have taken the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration, or where such alienee, in violation of some trust, shall have purchased the lands so conveyed, with monies belonging to another person.

[The same.]

Barb., 544; 39 Barb., 632; 80 N. Y., 538; 103

§ 54. No implied or resulting trust shall be alleged or established, to defeat or prejudice the title of a purchaser, for a valuable consideration, and without notice of such trust.

§ 55. Express trusts may be created, for any or either of the following purposes:

1. To sell lands for the benefit of creditors;
2. To sell, mortgage or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon;
3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the first article of this title;
4. To receive the rents and profits of lands, and to accumulate the same, for the purposes and within the limits prescribed in the first article of this act. [Thus amended by L. 1830, ch. 320, § 10.]

23 N. Y., 577; 17 N. Y., 567; 12 N. Y., 408; 7 N. Y., 257; 6 N. Y., 578; 5 N. Y., 413, 537; 2 N. Y., 306; 31 Barb., 336; 25 Barb., 386; 23 Barb., 498; 20 Barb., 639; 18 Barb.,

ART. 2.

Preceding sections qualified.

7 N. Y., 570; 2 N. Y., 373; S. C., 524; 45 407; 4 T. & N. C., 13.

Grant to one for money paid by another, no trust to result.

Except for benefit of creditors, &c.

Section 51 qualified.

52 N. Y., 251, 261; 45 N. Y., 596; 29 N. Y., 588, 610; 18 N. Y., 515; 11 Barb., 407; 16 Barb., 376; 17 Barb., 108; 47 N. Y., 807.

Purchasers protected. 22 N. Y., 566; 29 N. Y., 613.

For what purposes express trusts may be created.

[729]

TITLE 2.

Certain devisees in trust, to be deemed powers.

6 N. Y. S. C. R. (T. & C.) 555; 18 N. Y., 107; 2 Barb., 537; 364, 370; 53 N. Y., 351; 2 Bradf., 107; 4 Hun, 290; 5 Redf., 1; 8 Dem., 565; 11 Daly, 95; 26 Hun, 253; 27 Hun, 155; 28 Hun, 603, 623; 38 Hun, 14, 371; 37 Hun, 21; 38 N. Y., 357; 39 N. Y., 169, 176, 225, 235; 97 N. Y., 27, 437, 458; 98 N. Y., 38; 99 N. Y., 279; 101 N. Y., 304; 104 N. Y., 325; 44 Hun, 240; 105 N. Y., 185.

Profits of land liable to creditors in certain cases.

6 N. Y., 578; 18 Barb., 469; 1 Barb. Ch., 36; 8 Paige, 85; 5 id., 586; 3 Edw., 379; 236; 38

Other express trusts, to be powers in trust.

And land, &c., to descend to persons entitled.

53 N. Y., 351; 49 Barb., 132; 47 id., 614; 4 Lans., 238; 8 Bosw., 193; 30 N. Y., 174, 191; 4 Hun, 290; 98 N. Y., 38; 104 N. Y., 325.

Trustees of express trusts to have whole estate.

Last section qualified.

46 N. Y., 168, 576; 21

478; 9 Barb., 340, 585; 5 Barb., 101, 144, 444, 613; 3 Barb. Ch., 92; 2 Barb. Ch., 517; 3 Hill, 101; 5 Denio, 651; 4 Denio, 339; 1 Denio, 57; 7 Paige, 234, 275; 5 Paige, 220, 461; 22 Wend., 486; 14 Wend., 265; 11 Wend., 240; 2 Edw., 91; 4 Sandf. Ch., 414; 5 Sandf. S. C., 363; 3 Sandf. S. C., 503; 3 Abb., 403; 13 How. Pr. R., 137; 8 How. Pr. R., 339; 2 Duer, 59; 34 N. Y., 340, 555; 36 N. Y., 41; 47 Barb., 269, 618; 41 Barb., 69; 6 T. & C., 551; 70 N. Y., 615; 4 Hun, 80; 64 N. Y., 432; 10 N. Y., 141; 39 N. Y., 73; 29 id., 613; 23 N. Y., 563; 43 N. Y., 106, 496; 51 N. Y., 332, 338; 45 N. Y., 444; 4 Lans., 234; 72 N. Y., 378; 78 N. Y., 244; 18 Hun, 262; 19 Hun, 209; 80 N. Y., 15; 32 Hun, 87; 13 Abb. N. C., 91; 85 N. Y., 53; 96 N. Y., 75; 97 N. Y., 25, 420; 98 N. Y., 35; 101 N. Y., 504; 104 N. Y., 325; 105 N. Y., 185; 44 Hun, 239.

§ 56. A devise of lands to executors or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, shall vest no estate in the trustees; but the trust shall be valid as a power, and the lands shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

2 Edw., 559; 2 Hill, 569; 8 Bosw., 173; 39 How. Pr. R., 106; 41 N. Y., 238; 43 N. Y., 364, 370; 53 N. Y., 351; 2 Bradf., 107; 4 Hun, 290; 5 Redf., 1; 8 Dem., 565; 11 Daly, 95; 26 Hun, 253; 27 Hun, 155; 28 Hun, 603, 623; 38 Hun, 14, 371; 37 Hun, 21; 38 N. Y., 357; 39 N. Y., 169, 176, 225, 235; 97 N. Y., 27, 437, 458; 98 N. Y., 38; 99 N. Y., 279; 101 N. Y., 304; 104 N. Y., 325; 44 Hun, 240; 105 N. Y., 185.

§ 57. Where a trust is created to receive the rents and profits of lands, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, shall be liable, in equity, to the claims of the creditors of such person, in the same manner as other personal property, which cannot be reached by an execution at law.

2 Sandf. S. C., 541; 14 N. Y., 41; 11 Paige, 140; 8 Bosw., 92; 6 Robt., 534; 34 Hun, Hun, 13; 99 N. Y., 617.

§ 58. Where an express trust shall be created, for any purpose not enumerated in the preceding sections, no estate shall vest in the trustees; but the trust, if directing or authorising the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions in relation to such powers, contained in the third article of this title.

13 N. Y., 404; 7 N. Y., 570; 23 Barb., 499; 9 Barb., 519; 1 Barb., 58; 9 Paige, 116; 8 Paige, 129; 3 Sandf. Ch., 554; 8 Wend., 661; 18 Wend., 257; 22 Wend., 463; 30 N. Y., 191; 36 Barb., 44; 59 Barb., 78; 52 Barb., 316; 47 Barb., 614; 43 N. Y., 364, 370; 21 N. Y., 292; 35 N. Y., 87; 29 N. Y., 30, 87; 24 N. Y., 9-15; 70 N. Y., 615; 9 Hun, 175; 1 Lans., 366; 4 Lans., 238; 8 Bosw., 193; 6 T. & C., 551; 72 N. Y., 556; 28 Hun, 603; 36 Hun, 14; 98 N. Y., 38; 104 N. Y., 325.

§ 59. In every case where the trust shall be valid as a power, the lands to which the trust relates, shall remain in, or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

47 id., 614; 4 Lans., 238; 8 Bosw., 193; 30 N. Y., 174, 191; 4 Hun, 290; 98 N. Y., 38; 104 N. Y., 325.

§ 60. Every express trust, valid, as such, in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees, in law and in equity, subject only to the execution of the trust. The persons for whose benefit the trust is created, shall take no estate or interest in the lands, but may enforce the performance of the trust in equity.

33 N. Y., 319, 331; 24 N. Y., 9-15; 1 Bosw., 150; 65 Barb., 557; 59 Barb., 78; 56 Barb., 608; 70 N. Y., 81; 68 N. Y., 227; 52 Barb., 316; 1 N. Y. S. C. R. (T. & C.), 125; 21 N. Y., 576; 17 N. Y., 567; 10 N. Y., 271; 9 N. Y., 413; 6 N. Y., 678; 3 N. Y., 585; 31 Barb., 336; 25 Barb., 305; 2 Barb., 601; 1 Barb. Ch., 36; 2 Edw., 559; 7 How., Pr. R., 349; 4 E. D. Smith, 134; 3 Sandf. S. C., 531; 53 N. Y., 359, 608; 46 N. Y., 168, 576; 27 Hun, 155; 28 Hun, 573, 629; 38 Hun, 368; 37 Hun, 21; 41 Hun, 552; 88 N. Y., 153, 357; 97 N. Y., 421, 433, 446; 104 N. Y., 45.

§ 61. The preceding section shall not prevent any person creating a trust, from declaring to whom the lands to which the trust relates, shall belong, in the event of the failure or termination of the trust;

nor shall it prevent him from granting or devising such lands, subject to the execution of the trust. Every such grantee or devisee shall have a legal estate in the lands, as against all persons, except the trustees and those lawfully claiming under them.

Smith, 134; 4 Hun, 286; 70 N. Y., 141; 70 N. Y., 81; 99 N. Y., 279.

§ 62. Where an express trust is created, every estate and interest not embraced in the trust and not otherwise disposed of, shall remain in, or revert to, the person creating the trust, or his heirs, as a legal estate.

Y., 169; 53 N. Y., 351; 56 Barb., 606; 4 T. & C., 48; 106 N. Y., 47.

§ 63. No person beneficially interested in a trust for the receipt of the rents and profits of lands, can assign or in any manner dispose of such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created, are assignable.

19 N. Y., 455; 12 N. Y., 491; 6 N. Y., 578; 31 Barb., 336; 26 Barb., 453; 7 Barb., 235; 5 Barb., 196; 1 Barb. Ch., 36; 8 Paige, 85; 7 Paige, 521; 5 Paige, 596; 4 Edw., 507; 3 Sandf. Ch., 534; 1 Sandf. Ch., 341; 5 Sandf. S. C., 363; 3 Sandf. S. C., 541; 23 Wend., 549; 18 How. Pr. R., 84; 16 Wend., 61; 24 Wend., 641; 35 N. Y., 371; 43 Barb., 311; 56 Barb., 233, 605; 4 Lana., 337; 1 Bosw., 143; 2 Abb. Pr. R., N. S., 15; 80 N. Y., 15; 5 Redf., 406; 4 Dem., 458; 16 Abb. N. C., 26, note; 32 Hun, 189; 37 Hun, 22; 36 Hun, 533; 41 Hun, 552; 59 N. Y., 169; 97 N. Y., 81, 433, 460; 99 N. Y., 618; 10 N. Y. St. Rep., 176.

§ 64. Where an express trust is created, but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute, as against the subsequent creditors of the trustees, not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration.

Effect of omitting trust in conveyance
29 Barb., 434; 23 Barb., 97.

§ 65. Where the trust shall be expressed in the instrument creating the estate, every sale, conveyance or other act of the trustees, in contravention of the trust, shall be absolutely void; provided, however, that the supreme court shall have power, upon such terms and conditions as to the court shall seem just and proper, in any case to authorize any such trustee to mortgage or sell any such real estate whenever it shall appear to the satisfaction of said court, or a judge thereof, that it is for the best interest of said estate so to do, and that it is necessary, and for the benefit of the estate, to raise by mortgage thereon, or by a sale thereof, funds for the purpose of preserving or improving such estate. No order directing such trustee to mortgage or sell said lands shall be granted, unless it shall appear to the satisfaction of such court or judge that a notice in writing, stating the time and place of making the application therefor, has been served upon the beneficiary or beneficiaries of said trust, at least eight days before making such application, if said beneficiary or beneficiaries are within this state and adult. In case said beneficiary or beneficiaries are infants, lunatics, persons of unsound mind, habitual drunkards or absentees, said court or judge shall not direct the trustees to mortgage or sell said lands until such beneficiary or beneficiaries are brought into court by such notice as said court or judge may prescribe. [Thus amended by L. 1886, ch. 257; superseding L. 1882, ch. 275, and L. 1884, ch. 26.]

Certain sales, etc., by trustees, void.
24 N. Y., 9, 12; 44 N. Y., 261; 48 N. Y., 444; 30 N. Y., 31; 18 N. Y., 107; 12 N. Y., 394; 6 N. Y., 360; 31 Barb., 336; 26 N. Y., 551; 56 Barb., 605; 30 Barb., 321; 30 Barb., 404; 7 How. Pr. R., 349; 33 Barb., 473, 480; 1 Bosw., 143; 80 N. Y., 18; 28 Hun, 573; 32 Hun, 189; 37 Hun, 23; 41 Hun, 16, 549; 92 N. Y., 76, 83; 97 N. Y., 446; 101 N. Y., 287.

§ 66. No person who shall actually and in good faith pay a sum of money to a trustee, which the trustee as such is authorised to receive, shall be responsible for the proper application of such money,

Others not to be affected by misconduct of trustees.

TITLE 2.

10 Paige,
282; 12 N.
Y., 403; 30
Barb., 133;
22 Barb.,
99; 7 Johns.

according to the trust; nor shall any right or title, derived by him from such trustee, in consideration of such payment, be impeached or called in question, in consequence of any misapplication by the trustee, of the monies paid.

Ch. R., 150; 16 How. Pr. R., 357; 7 Lans., 98; 20 Hun, 126, 128.

When
estate of
trustee to
cease.

35 N. Y.,
476; 4 Hun,
286; 64
Barb., 76;
49 Barb.,
131; 7
Boesw., 241;
11 Hun, 127;
70 N. Y., 81;
2 Robt., 133;
5 Paige, 458;
4 Paige, 404;
2 Sandf.
Ch., 296; 9
Barb., 518;
24 N. Y., 555;

§ 67. When the purposes for which an express trust shall have been created shall have ceased, the estate of the trustees shall also cease, and where an estate has been conveyed to trustees for the benefit of creditors and no different limitation is contained in the instrument creating the trust, such trust shall be deemed discharged at the end of twenty-five years from the creation of the same; and the estate conveyed to trustee or trustees and not granted or conveyed by him or them shall revert to the grantor or grantors, his or their heirs or devisees, or persons claiming under them, to the same effect as though such trust had not been created. [*Thus amended by L. 1875, ch. 545.*]

15 Abb. N. C., 123; 27 Hun, 155; 37 Hun, 22; 103 N. Y., 655.

Trust es-
tate not to
descend,
etc.

Trust to
vest in
chancery.

44 N. Y.,
257; 60
Barb., 18;
50 Barb., 78;
407; 2 Barb.,
Hun, 507; 5

§ 68. Upon the death of the surviving trustee of an express trust, the trust estate shall not descend to his heirs, nor pass to his personal representatives; but the trust, if then unexecuted, shall vest in the court of chancery, with all the powers and duties of the original trustee, and shall be executed by some person appointed for that purpose, under the direction of the court.

2 Robt., 536; 1 Redf., 283; 2 Abb. Ct. App. Dec., 37; 51 N. Y., 647; 2 Hun, 56; 27 Barb., 638; 7 Paige, 107; 5 Paige, 509; 47 Barb., 513; 28 Barb., 473; 11 Hun, 127; 30 Hun, 302; 40 Dem., 555; 5 Redf., 1; 66 N. Y., 174; 90 N. Y., 117.

When and
how
trustee
may re-
sign.

19 N. Y.,
455; 25
Barb., 99;
1 Barb.
Ch., 508; 3

§ 69. Upon the petition of any trustee, the court of chancery may accept his resignation, and discharge him from the trust, under such regulations as shall be established by the court for that purpose, and upon such terms, as the rights and interests of the persons interested in the execution of the trust may require.

5 Paige, 420; 2 Robt., 558; 1 Redf., 282; 24 Hun, 153; 60 N. Y., 136, 144; 96 N. Y., 237.

When and
how
trustee
may be re-
moved.

1 Redf., 283;
2 Abb. Pr.
R., N. S., 15;
41 N. Y.,
121; 9 N. Y.,
178; 2
Barb., 447;

§ 70. Upon the petition or bill of any person interested in the execution of a trust, and under such regulations as for that purpose shall be established, the court of chancery may remove any trustee who shall have violated or threatened to violate his trust, or who shall be insolvent, or whose insolvency shall be apprehended, or who, for any other cause, shall be deemed an unsuitable person to execute the trust.

1 E. D. Smith, 573; 24 N. Y., 340; 45 Barb., 337; 65 Barb., 250; 3 Dem., 27.

How
place
supplied.

[731]
41 Barb.,
121; 65
Barb., 250;
2 Robt., 559;
2 Redf., 282;
25 Barb., 99;
1 Barb. Ch.,

§ 71. The chancellor shall have full power to appoint a new trustee, in place of a trustee resigned or removed; and when, in consequence of such resignation or removal, there shall be no acting trustee, the court, in its discretion, may appoint new trustees, or cause the trust to be executed by one of its officers, under its direction.

508; 5 Paige, 47, 560; 11 Abb. Pr., 473; 31 How. Pr. R., 78; 60 N. Y., 136, 144; 96 N. Y., 23.

Applica-
tion of
three last
sections.

§ 72. The three last sections shall extend only to cases of express trusts.

41 N. Y., 121; 65 Barb., 250; 2 Abb., N. S., 15; 28 Hun, 64.

[Supplementary Article.]

ARTICLE 24.

ACTS RELATING TO TRUSTS OF REAL AND PERSONAL PROPERTY.

L. 1839, Chap. 174 — An act in relation to certain trusts.

Certain deeds of trust for any Shaker society valid; estates may be continued. SECTION 1. All deeds of trust in relation to real and personal estate executed and delivered prior to the first day of January, eighteen hundred and thirty, to any persons in trusts for any united society of the people commonly called Shakers, shall be valid and effectual to vest in the trustees the legal estates and interests purported to be conveyed by such deeds, to and for the uses and purposes declared therein, or declared by any declaration of trusts executed by such trustees in the same manner and to the same effect as before the first day of January, eighteen hundred and thirty: and such legal estate and trusts, and all the legal authority with which the original trustees were vested by virtue of their appointment and conferred powers, shall forever descend in regular succession to their successors in office and trust, who in conformity to the constitution of said society have been duly chosen and appointed. [*Thus amended by L. 1849, ch. 373.*]

27 Barb., 386; 17 Barb., 106.

Such trusts may be created hereafter; limitation of value of property. § 2. Trusts of real and personal estate for the benefit of any united society of the people called Shakers, may hereafter be created for the use of the members of any such society according to the religious constitution of such society; and the legal estates of any property so held in trust shall be vested in the trustees and in those to whom such property may be transmitted in trust by the appointment of any such society, so long as may be required for the objects and purposes of such trusts. But no society shall become beneficially interested in any real or personal property, or acquire any equitable right or interest in any such property, either directly or indirectly, the annual value or income of which after deducting necessary expenses, shall exceed twenty-five thousand dollars, on pain of forfeiture of the privileges conferred by this act: nor shall any trustee be a trustee of more than one such society at the same time. [*Thus amended by L. 1852, ch. 203.*]

Meaning of "society." § 3. The word "society," for the purposes of the preceding section, shall be construed and understood to mean and include all persons of the religious belief of the people called Shakers, resident within the same county.

Right to repeal. § 4. The legislature may at any time alter, modify or repeal this act.

L. 1839, Chap. 184 — An act in relation to trusts for the benefit of the meetings of the religious society of Friends.

Former trusts for Friends, valid. SECTION 1. All deeds or declarations of trusts of real or personal estate, heretofore executed and delivered to any person or persons, in trust, or for the use and benefit of any meeting of the religious society of Friends, and the trusts thereby created or declared, shall be valid; and the legal estates may be transmitted, and the trusts so created or declared may be continued and pursued, so long as may be required for the purposes of the trusts, by conveyances from the trustees named in such deeds to other trustees appointed by such meeting, and by conveyances from them to others appointed in like manner or otherwise, according to the directions of such meeting.

31 Barb., 563; 27 Barb., 387; 17 Barb., 106.

Society of Friends, trusts may be created for use of. § 2. Trusts of real or personal estate for the benefit of any meeting of the religious society of Friends may be

hereafter created for the use of such meeting according to the regulations and rules of discipline of said society; and the legal estate of any property, so held in trust, shall be vested in the trustees and in those to whom such property may be conveyed in trust, by the appointment of any such meeting, so long as may be required for the objects and purposes of such trusts, but nothing contained in this act shall be so construed as to impair or diminish the rights of any person, meeting, or association of persons claiming to be a meeting of the religious society of Friends, which such person, or meeting, or association claiming to be a meeting as aforesaid, had either in law or in equity to or in any real or personal estate held in trust for the use and benefit of any meeting of the said religious society, prior to the division which took place in said religious society at the yearly meeting held in the city of New York in the month of May, in the year of our Lord one thousand eight hundred and twenty-eight; and nothing in this act contained shall authorize any real or personal estate to be held in trust for any meeting of such society, the annual value or income of which shall exceed twenty thousand dollars. [*Thus amended by L. 1880, ch. 337.*]

Death of trustees. § 3. In case of the death of all the trustees heretofore appointed, or who may be hereafter appointed by virtue of this act, any regular meeting of the religious society of Friends, for whose use and benefit said property was held in trust, may appoint a trustee or trustees in the place of such person or persons, and the person or persons thus appointed by such meeting shall succeed to and be invested with all the powers, rights and duties conferred by this act and the deed or declaration of trust upon the trustee or trustees. [*Added by L. 1878, ch. 209.*]

Sale of property; deed, what to contain. § 4. The trustee or trustees, or survivor of any trustees, appointed pursuant to this act, may sell, convey and grant or demise any or all of the trust property described in said trust deed or declaration of trust to any person absolutely, or in trust for said meeting, whenever any meeting of said society shall by resolution direct the same to be sold and conveyed; any conveyance of real estate or property so held in trust by any meeting of the religious society of Friends, which may hereafter be made under and in pursuance of a resolution of the said meeting as provided herein, shall be as valid and effectual for the conveyance of the title of any real estate so held in trust, as if the heirs of any trustee who may have died prior to the passage of said resolution had joined in the execution of said conveyance or demise. Any instrument for the sale or demise of said property shall embody the said resolution of said meeting, relating to said sale or demise of said property, and shall be executed by the said trustee or trustees; and in said acknowledgment said trustee or trustees shall make an affidavit that the person or persons so executing said conveyance or demise are the trustee or trustees of said trust property, and that the said resolution embodied in said conveyance or demise was duly passed by said meeting; and the said affidavit thus made shall be *prima facie* evidence of the facts therein stated. [*Added by L. 1878, ch. 209.*]

L. 1840, Chap. 318 — An act authorizing certain trusts.

Property may be granted to certain literary institutions in trust. SECTION 1. Real and personal property may be granted and conveyed to any incorporated college or other literary incorporated institution in this state, to be held in trust for either of the following purposes:

1. To establish and maintain an observatory.
2. To found and maintain professorships and scholarships.
3. To provide and keep in repair a place for the burial of the dead; or
4. For any other specific purposes comprehended in the general objects authorized by their respective charters. The said trusts may be created, subject to such conditions and visitations as may be prescribed by the grantor or donor, and

agreed to by said trustees, and all property which shall hereafter be granted to any incorporated college or other literary incorporated institution in trust for either of the aforesaid purposes, may be held by such college or institution upon such trusts, and subject to such conditions and visitations as may be prescribed and agreed to as aforesaid.

17 Barb., 105; 9 Barb., 99, 324; 4 Hun, 290; 3 Lans., 357; 48 N. Y., 438, 494; 45 Hun, 354.

To corporations of cities or villages. § 2. Real and personal estate may be granted and conveyed to the corporation of any city or village of this state, to be held in trust for any purpose of education, or the diffusion of knowledge, or for the relief of distress, or for parks, gardens, or other ornamental grounds, or grounds for the purposes of military parades and exercise, or health and recreation, within or near such incorporated city or village, upon such conditions as may be prescribed by the grantor or donor, and agreed to by such corporation; and all real estate so granted or conveyed to such corporation, may be held by the same, subject to such conditions as may be prescribed and agreed to as aforesaid.

15 Barb., 147; 48 N. Y., 494; 41 Hun, 350.

For use of common schools. § 3. Real and personal estate may be granted to commissioners of common schools of any town, and to trustees of any school district, in trust for the benefit of the common schools of such town, or for the benefit of the schools of such district.

Trusts how long to continue. § 4. The trusts authorized by this act may continue for such time as may be necessary to accomplish the purposes for which they may be created.

2 T. & C., 191.

L. 1841, Chap. 261—An act in addition to the “Act authorizing certain trusts,” passed May 14, 1840.

Devise and bequest in trust to be as valid as a conveyance. SECTION 1. Devises and bequests of real and personal property in trust, for any of the purposes for which such trusts are authorized under the “act authorizing certain trusts,” passed May 14, 1840, and to such trustees as are therein authorized, shall be valid in like manner as if such property had been granted and conveyed according to the provisions of the aforesaid act.

2 T. & C., 191; 48 N. Y., 438, 494; 17 Barb., 106; 15 Barb., 147; 9 Barb., 99, 348; 6 T. & C., 351; 45 Hun, 354.

L. 1846, Chap. 74—An act to amend the act, passed May, 1841, authorizing colleges and other incorporated literary institutions to hold real and personal estate in trust, so as to allow the same to accumulate for certain specific purposes.

Income may be accumulated. SECTION 1. The income arising from any real or personal property granted or conveyed, devised or bequeathed in trust to any incorporated college or other incorporated literary institution, for any of the purposes specified in the “Act authorizing certain trusts,” passed May 14th, 1840, or for the purpose of providing for the support of any teacher in a grammar school or institute, may be permitted to accumulate till the same shall amount to a sum sufficient, in the opinion of the regents of the university, to carry into effect either of the purposes aforesaid, designated in said trust.

3 Lans., 357.

L. 1855, Chap. 432—An act in relation to the accumulation of the income of certain trust funds.

Diminution of income, how supplied. SECTION 1. If any of the principal of any trust fund actually received by any incorporated college, or other incorporated

literary institution, or by the corporation of any city or village, or by the commissioners of common schools of any town, or by the trustees of any school district, under any grant, conveyance, devise or bequest, for any of the purposes for which trusts are authorized under the "Act authorizing certain trusts," passed May fourteenth, one thousand eight hundred and forty, and the act in addition to the act authorizing certain trusts, passed May twenty-sixth, eighteen hundred and forty-one, shall subsequently become diminished from any cause; such diminution may be made up by the accumulation of the interest or income of the principal of such trust fund, in accordance with the direction (if any) contained in the grant, conveyance, devise or bequest of such trust fund; and if no directions for that purpose are contained in such grant, conveyance, devise or bequest, then such diminution may be made up in whole or in part by such accumulation, in the discretion of the trustees of such trust fund; but in no case shall such accumulation be allowed to increase the trust fund, beyond the true amount or value thereof, actually received by the trustees, to be estimated after the deduction of all liens and incumbrances on such trust fund, and of all expenses incurred or paid by the trustees in the collection or obtaining the possession of the same.

L. 1879, Chap. 203—An act to authorize historical societies in this state to hold real estate for preservation and monumental purposes and to receive historical articles in trust.

Real estate for monumental purposes; historic articles. SECTION 1. Any historical society in this state is hereby authorized to have and hold for the purposes of inclosure, preservation and the erection of monuments, but under no circumstances for the purposes of business, the sites of old forts and battles, not to exceed six acres in one locality, and when such sites have been so appropriated and improved, and used for such purposes only, they shall be exempt from taxation; and to receive donations of articles of historic interest on the condition that it shall not dispose of the same, except with the consent of the donor, and that in case of its dissolution or inability to pay its debts otherwise than from its effects, the said articles shall revert to the donors or their heirs. But nothing herein contained shall be construed as authorizing the charging of any fee for the exhibition of such inclosure or structure by such historical society or their agents.

L. 1882, Chap. 185 — An act in relation to trustees of personal estates.

Trust estate not to descend, but vest in supreme court. SECTION 1. Upon the death of a surviving trustee of an express trust, the trust estate shall not descend to his next of kin or personal representatives, but the trust, if unexecuted, shall vest in the supreme court, with all the powers and duties of the original trustee, and shall be executed by some person appointed for that purpose under the direction of the court. But no person shall be appointed to execute said trust until the beneficiary thereof shall have been brought into court by such notice and in such manner as the court may direct.

3 Dem., 563; 99 N. Y., 114.

ART. 3.

ARTICLE THIRD.

OF POWERS.

SEC. 73. Powers as they now exist abolished; future powers to be governed by this article.

74. Definition of a power.

75. Who capable of granting powers.

76. Division of powers, general or special, and beneficial or in trust.

77 & 78. Definitions of general and special powers.

ART. 3.

- SBC.** 79. When a general or special power is beneficial.
 80. Married women may execute general and beneficial powers.
 81. Absolute power of disposition in tenant for life, etc., creates a fee, etc.
 82. Like power to any other, creates absolute fee as to creditors, etc.
 83. When grantee of such power entitled to absolute fee.
 84. Power to devise inheritance to be deemed absolute power in certain cases.
 85. Power to dispose of fee in certain cases, absolute power of disposition.
 86. Effect of reserving power of revocation.
 87. To whom special and beneficial powers may be granted.
 88. Power of tenant for life to make leases, not assignable, etc.
 89. To whom it may be released.
 90 & 91. Effect of mortgages by persons having power to make leases.
 92. Future beneficial powers not herein enumerated, invalid.
 93. Liability of beneficial powers in equity, to creditors.
 94. When general powers are in trust.
 95. When special powers are in trust.
 96. Trust powers imperative, unless expressly made optional.
 97. Effect of a right of selection by grantee of power.
 98 & 99. Powers to distribute among several persons, how to be construed.
 100. Chancery to execute power on death of trustee having right of selection.
 101. Also where person to execute power is not designated.
 102. Certain prior sections to apply to power in trust.
 103. Creditors, etc., of objects of trust, when to compel execution of powers.
 104. Effect of assignments under insolvent acts, etc., upon beneficial powers.
 105. Powers that may be reserved by grantors in conveyances.
 106. By what instruments powers may be granted.
 107. When powers to be recorded.
 108. Powers irrevocable unless authority is expressly reserved.
 109. In whom powers may be vested; by whom exercised.
 110. Married women, when and how to execute powers.
 111. Married women not to execute power until of age.
 112. Powers to be executed by all surviving grantors thereof.
 113. By what instruments powers to be executed.
 114. Such instruments to be deemed conveyances.
 115. Power to dispose by devise, how executed.
 116. Power to dispose by grant, cannot be executed by will.
 117. Executions by married women, to be acknowledged.
 118. Execution governed by preceding rules, although otherwise directed by grantor.
 119. Useless formalities directed, dispensed with.
 120. Nominal conditions may be disregarded.
 121. In other respects, directions of grantor to be observed.
 122. Consent of third persons to execution of power, how evidenced.
 123. Dispositions not void on account of being too extensive.
 124. Instruments executing power valid, although power not recited.
 125. Such instruments affected by fraud.
 126. General terms in a will sufficient to execute power to devise.
 127. Estates given to descendants by virtue of certain powers, to be advancements.
 128. How term during which alienation may be suspended, to be computed.
 129. Who capable of taking in execution of power.
 130. Authority of married women, under powers.
 131. Defective executions of powers, corrected in equity.
 132. Relief to purchasers under defective executions.
 133. Powers to sell in mortgages, to pass to assignees thereof.
 134. This article not to extend to simple powers of attorney, etc.
 135. Definition of the terms "grantor of a power" and "grantee of a power."

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§ 73. Powers, as they now exist by law, are abolished; and from the time this chapter shall be in force, the creation, construction and execution of powers, shall be governed by the provisions of this article.

584; 29 N. Y., 39, 78; 8 Bosw., 192; 73 N. Y., 230; 28 Hun, 64, 214, 608; 32 Hun, 435; 86 N. Y., 522; 88 N. Y., 174; 93 N. Y., 199, 236, 304, 697.

Powers as they now exist abolished. Future powers.

§ 74. A power is an authority to do some act in relation to lands, or the creation of estates therein, or of charges thereon, which the

Definition of a power. 85 N. Y.

TITLE 2.

owner granting or reserving such power, might himself lawfully perform.

89; 4 Lans., 234; 7 Barb., 62; 6 Hun, 31; 97 N. Y., 558; 92 N. Y., 627.

Who may grant powers.
3 Duer, 85; 8 Bosw., 193; 4 Hun, 744.

Division of powers.
20 Barb.,

Definition of general powers.
49 Barb.,

54; 4 Lans., 233; 45 How. Pr. R., 166; 8 Bosw., 193; 69 N. Y., 1; 31 Barb., 52; 1 Barb., 62; 41 Barb., 69; 43 N. Y., 534; 36 N. Y., 581, 583; 28 Hun, 64, 608; 42 Hun, 37; 35 Hun, 298; 36 Hun, 170; 83 N. Y., 174; 97 N. Y., 421, 448.

Definition of special powers.
11 N. Y., 402; 41 Barb., 69; 8 Bosw., 193; 36 Hun, 170.

Beneficial powers.
45 How. Pr. R., 166; 20 Barb., 238; 22 Wend., 36 Hun, 293; 97 N. Y., 558.

Powers to married women.
15 N. Y., 313; 12 N. Y., 423; 7

Estate of tenant for life, &c., when changed into a fee.
8 Bosw., 193; 2 Lans., 276; 45 How. Pr. R., 166; 47

Certain powers create a fee, &c.
6 T. & C., 550; 43 N. Y., 534; 2

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Id.
2 N. Y., 534; 49 Barb., 55; 2 Lans., 276; 2 Abb. Ct. App. Dec., 178; 69 N. Y., 1.

Effect of power to devise inheritance in certain cases.
49 Barb., 55; 2 Lans., 276; 2 Abb. Ct. App.

Dec., 178; 20 Hun, 360; 37 Hun, 478.

§ 75. No person is capable in law of granting a power, who is not at the same time, capable of aliening some interest in the lands to which the power relates.

§ 76. Powers, as authorised in this article, are general or special, and beneficial or in trust.

§ 77. A power is general, where it authorises the alienation in fee, by means of a conveyance, will or charge of the lands embraced in the power, to any alienee whatever.

§ 78. A power is special,

1. Where the persons or class of persons, to whom the disposition of the lands under the power is to be made, are designated,

2. Where the power authorises the alienation, by means of a conveyance, will or charge of a particular estate or interest less than a fee.

§ 79. A general or special power is beneficial, when no person other than the grantee has, by the terms of its creation, any interest in its execution.

§ 80. A general and beneficial power may be given to a married woman, to dispose, during her marriage, and without the concurrence of her husband, of lands conveyed or devised to her in fee.

§ 81. Where an absolute power of disposition, not accompanied by any trust, shall be given to the owner of a particular estate, for life or years, such estate shall be changed into a fee, absolute in respect to the rights of creditors and purchasers, but subject to any future estates limited thereon, in case the power should not be executed, or the lands should not be sold for the satisfaction of debts.

§ 82. Where a like power of disposition shall be given to any person to whom no particular estate is limited, such person shall also take a fee, subject to any future estates that may be limited thereon, but absolute in respect to creditors and purchasers.

§ 83. In all cases where such power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee shall be entitled to an absolute fee.

§ 84. Where a general and beneficial power, to devise the inheritance, shall be given to a tenant for life or for years, such tenant shall be deemed to possess an absolute power of disposition, within the meaning and subject to the provisions of the three last preceding sections.

§ 85. Every power of disposition shall be deemed absolute by means of which the grantee is enabled, in his life time, to dispose of the entire fee, for his own benefit.

399; 6 N. Y. S. C. R. (T. & C.), 555; 66 N. Y., 1; 17 Abb. N. C., 340; 4 Dem., 240; 97 N. Y., 7 Paige, 338, 433, 449, 558.

ART. 8.

Power to dispose of fee.

§ 86. Where the grantor in any conveyance shall reserve to himself, for his own benefit, an absolute power of revocation, such grantor shall still be deemed the absolute owner of the estate conveyed so far as the rights of creditors and purchasers are concerned.

Power to revoke.

§ 87. A special and beneficial power may be granted,

Special

1. To a married woman, to dispose, during the marriage, and without the concurrence of her husband, of any estate less than a fee, belonging to her, in the lands to which the power relates :

and beneficial powers, who may take.

15 N. Y.,

307; 18

Wend., 370;

20 Hun, 380.

2. To a tenant for life of the lands embraced in the power, to make leases for not more than twenty-one years, and to commence in possession during his life.

§ 88. The power of a tenant for life to make leases, is not assignable as a separate interest, but is annexed to his estate, and will pass, (unless specially excepted) by any conveyance of such estate. If specially excepted in any such conveyance, it is extinguished.

Power to make leases by tenant for life.

§ 89. Such power may be released by the tenant to any person entitled to an expectant estate in the lands, and shall thereupon be extinguished.

Release of such power.

§ 90. A mortgage executed by a tenant for life having a power to make leases, or by a married woman, by virtue of any beneficial power, does not extinguish or suspend the power; but the power is bound by the mortgage, in the same manner as the lands embraced therein.

Mortgages by party having power to lease, &c. 56 Barb., 605.

§ 91. The effects of such a lien by mortgage on the power, are,

1. That the mortgagee* is entitled, in equity, to an execution of the power, so far as the satisfaction of his debt may require :

Effect thereof. 56 Barb., 605.

2. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage, in the same manner as if in terms embraced therein.

§ 92. No beneficial power, general or special, hereafter to be created, other than such as are already enumerated and defined in this article, shall be valid.

Future beneficial powers.

18 Wend.,

270; 16

Wend., 324.

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Beneficial

powers lia-

ble to cred-

itors.

56 Barb.,

605; 7

Robt., 109.

General

powers

when in

trust.

7 Bosw.,

241; 69 N.

Y., 1; 4

Lans., 235;

N. Y., 535; 86

N. Y., 627.

§ 93. Every special and beneficial power is liable, in equity, to the claims of creditors, in the same manner as other interests that cannot be reached by an execution at law and the execution of the power may be decreed for the benefit of the creditors entitled.

§ 94. A general power is in trust, when any person or class of persons, other than the grantee of such power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from the alienation of the lands, according to the power.

5 Barbour, 193, 652; 1 Barb., 62; 3 Edw., 212; 3 Sandf. S. C., 555; 50 N. Y., 431; 43 N. Y., 584, 583; 28 Hun, 64, 603; 36 Hun, 170; 88 N. Y., 174; 97 N. Y., 421; 92

§ 95. A special power is in trust,

1. When the disposition which it authorises, is limited to be made to any person or class of persons, other than the grantee of such power.

Special powers when in trust.

5 Barb.,

652; 3 Edw.,

212; 3

Sandf. S.

* In the first edition of the Revised Statutes, this word is printed "mortgage." Not so in the original, on file in the office of the secretary of state.

TITLE 2.

O., 529; 1 Barb., 58; 35 N. Y., 39; 6 Hun, 534; 23 Hun, 603.

Trust powers imperative.

13 Abb. Pr. R., N. S., 15; 6 Hun, 534; 12 N. Y., 408; 3 N. Y., 230; 5 Barb., 4 Lans., 238;

Effect of right of selection.

Construction of certain powers. 41 Barb., 69.

Id.

When chancery to execute power. 25 Barb., 390; 5 Paige, 468; 3 Sandf. S.

Id. 5 N. Y., 139.

Application of certain prior sections. 25 Barb., 100; 49 Barb., 133; 23 Barb., 498; 15 Abb.

[735]
Execution of trust power when compelled by creditors, &c.
Beneficial powers, &c., how affected by insolvent assignments, &c.
47 Barb., 613, 674; 56 Barb., 606.
Reservation of powers in conveyances.
12 N. Y., 404.
How powers to be granted.

2. When any person or class of persons, other than the grantee, is designated as entitled to any benefit from the disposition or charge authorized by the power. [*Thus amended by L. 1830, ch. 320, § 11.*]

§ 96. Every trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled in equity, for the benefit of the parties interested.

198; 8 Paige, 120; 3 Edw., 212; 1 Barb., 58; 36 Barb., 44; 50 N. Y., 436; 65 Barb., 250; 37 Hun, 22; 88 N. Y., 174; 92 N. Y., 539, 551; 97 N. Y., 558.

§ 97. A trust power does not cease to be imperative, where the grantee has the right to select any, and exclude others of the persons designated as the objects of the trust.

§ 98. Where a disposition under a power is directed to be made to or among or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion.

§ 99. But when the terms of the power import that the estate or fund is to be distributed between the persons so designated, in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons, in exclusion of the other.

§ 100. If the trustee of a power, with the right of selection, shall die, leaving the power unexecuted, its execution shall be decreed in equity for the benefit equally of all the persons designated, as objects of the trust.

C., 559; 2 Sandf. S. C., 515.

§ 101. Where a power in trust is created by will, and the testator has omitted to designate by whom the power is to be exercised, its execution shall devolve on the court of chancery.

§ 102. The provisions contained in the second article of this title, from section sixty-six to section seventy-one, both inclusive, in relation to express trusts and trustees, shall apply equally to powers in trust, and the grantees of such powers.

§ 103. The execution in whole or in part, of any trust power, may be decreed in equity, for the benefit of the creditors or assignees of any person entitled as one of the objects of the trust, to compel its execution, when the interest of the objects of such trust is assignable.

47 Barb., 613; 56 Barb., 606; 8 Bosw., 186; 7 Robt., 109; 79 N. Y., 478.

§ 104. Every beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass to the assignee of the estate and effects of the person in whom such power or interest is vested, under any assignment authorised by the provisions of the fifth chapter of this act.

§ 105. The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and every power thus reserved, shall be subject to the provisions of this article, in the same manner as if granted to another.

§ 106. A power may be granted,

1. By a suitable clause contained in a conveyance of some estate in the lands, to which the power relates :

2. By a devise contained in a last will and testament.

4 Lans., 238; 36 N. Y., 533; 23 Hun, 64; 92

§ 107. Every power shall be a lien or charge upon the lands which it embraces, as against creditors and purchasers in good faith and without notice, of or from any person having an estate in such lands, only from the time the instrument containing the power shall be duly recorded. As against all other persons, the power shall be a lien from the time the instrument in which it is contained, shall take effect.

§ 108. Every power, beneficial or in trust, is irrevocable, unless an authority to revoke it, is granted or reserved in the instrument creating the power.

58; 23 Barb., 496; 46 N. Y., 577; 65 Barb., 250;

§ 109. A power may be vested in any person capable in law of holding, but cannot be exercised by any person not capable, of aliening lands, except in the single case mentioned in the next section.

§ 110. A married woman may execute a power during her marriage, by grant or devise, as may be authorised by the power, without the concurrence of her husband, unless by the terms of the power its execution by her, during marriage, is expressly or impliedly prohibited.

Barb., 333; 1 Barb. Ch., 13, 240; 10

§ 111. No power vested in a married woman, during her infancy, can be exercised by her, until she attains her full age.

§ 112. Where a power is vested in several persons, all must unite in its execution; but if previous to such execution, one or more of such persons shall die, the power may be executed by the survivor or survivors.

Pr., N. S., 296; 11 N. Y., 397; 1 N. Y., 358; 1 Barb. Ch., 569; 2 Paige, 197; 1 Sweeny, 89;

§ 113. No power can be executed except by some instrument in writing, which would be sufficient in law to pass the estate or interest intended to pass under the power, if the person executing the power were the actual owner.

§ 114. Every instrument, except a will, in execution of a power, and although the power may be a power of revocation only, shall be deemed a conveyance within the meaning, and subject to the provisions, of the third chapter of this act.

§ 115. Where a power to dispose of lands is confined to a disposition by devise or will, the instrument of execution must be a will duly executed, according to the provisions of the sixth chapter of this act.

Barb., 69; 97 N.

§ 116. Where a power is confined to a disposition by grant, it cannot be executed by will, although the disposition is not intended to take effect until after the death of the party executing the power.

412; 3 Barb., 128; 97 N.

§ 117. If a married woman execute a power by grant, the concurrence of her husband, as a party, shall not be requisite, but the grant shall not be a valid execution of the power, unless it be acknowledged by her on a private examination, in the manner prescribed in the third chapter of this act, in relation to conveyances by married women.

[See L. 1879, ch. 249, as amended by L. 1880, ch. 300, *post.*]

ART. 8.

5 N. Y. 413;
2 Sandf. 8.
C. 530;
N. Y., 637.

When powers to be recorded.
4 Hun, 290;
8 Bosw., 188; 6 T. & C., 556; 6 Hun, 634; 11 Daly, 97.

When powers irrevocable.
13 N. Y., 404; 1 Barb., 63; 2 Barb., 11 Daly, 93.

Who to execute powers.
10 Barb., 604.

Married women.
25 N. Y., 478; 15 N. Y., 307; 13 N. Y., 423; 27 Barb., 397.

Id.
1 Bradf., 114.
Execution by survivors, &c.
65 Barb., 250; 5 N. Y. S. C., 12; (T. & C.), 254; 6 Abb., 3 Hun, 61.

How executed.
[736]
11 N. Y., 398; 65 Barb., 256; 23 Hun, 608.

Instruments deemed conveyances.
13 N. Y., 404.

Execution of power to dispose by devise.
10 Barb., 597; 41 Y. 556.

Id., to dispose by grant.
4 N. Y., 4 Barb., 412; 3 Barb., 128; 97 N. Y., 556.

Married women to acknowledge executions.
61 Barb., 258; 63 Barb., 71; 16 W. D., 478.

TITLE 2.
Directions by grantor.

Directions by grantor.
 28 Hun, 603.

Nominal conditions.
 49 N. Y., 602.

When directions of grantor to be observed.
 2 Denio, 61;
 49 Barb., 183.

Consent of third persons to execution of power.
 11 N. Y., 387, 401; 49 N. Y., 602.

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 Certain dispositions, not void.

Omission to recite power.

Fraud.

Power to devise, how executed by terms of will.
 25 Barb., 564; 43

Certain estates to be advancements.
 61 Barb., 298; 8 Bosw., 183.

Computation of term of suspension.
 6 T. & C., 555; 12 N. Y., 404; 3 Duer, 73; 4

§ 118. Where the grantor of a power shall have directed or authorised it to be executed by an instrument not sufficient in law to pass the estate, the power shall not be void, but its execution shall be governed by the rules before prescribed in this article.

§ 119. When the grantor shall have directed any formalities to be observed in the execution of the power, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formalities shall not be necessary to a valid execution of the power.

§ 120. Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

§ 121. With the exceptions contained in the preceding sections, the intentions of the grantor of a power, as to the mode, time and conditions of its execution, shall be observed, subject to the power of the court of chancery, to supply a defective execution, in the cases hereinafter provided.

§ 122. When the consent of a third person to the execution of a power is requisite, such consent shall be expressed in the instrument by which the power is executed, or shall be certified in writing thereon. In the first case, the instrument of execution, in the second, the certificate, shall be signed by the party whose consent is required; and to entitle the instrument to be recorded, such signature must be duly proved or acknowledged, in the same manner as if subscribed to a conveyance of lands.

§ 123. No disposition, by virtue of a power, shall be void in law or in equity, on the ground that it is more extensive than was authorised by the power; but every estate or interest so created, so far as embraced by the terms of the power, shall be valid.

§ 124. Every instrument executed by the grantee of a power, conveying an estate or creating a charge, which such grantee would have no right to convey or create, unless by virtue of his power, shall be deemed a valid execution of the power, although such power be not recited or referred to therein.

§ 125. Instruments in execution of a power are affected by fraud, both in law and equity, in the same manner as conveyances by owners or trustees.

§ 126. Lands embraced in a power to devise, shall pass by a will purporting to convey all the real property of the testator, unless the intent that the will shall not operate as an execution of the power, shall appear, expressly or by necessary implication.
 Barb., 91; 92 N. Y., 295, 539.

§ 127. Every estate or interest given by a parent to a descendant, by virtue of a beneficial power, or of a power in trust with a right of selection, shall be deemed an advancement to such descendant, within the provisions of the second chapter of this act.

§ 128. The period during which the absolute right of alienation may be suspended, by any instrument in execution of a power, shall be computed, not from the date of such instrument, but from the time of the creation of the power.

Hun, 290; 29 N. Y., 39, 78; 30 Hun, 617; 96 N. Y., 214.

§ 129. No estate or interest can be given or limited to any person, by an instrument in execution of a power, which such person would not have been capable of taking, under the instrument by which the power was granted.

§ 130. When a married woman, entitled to an estate in fee, shall be authorised by a power to dispose of such estate during her marriage, she may by virtue of such power, create any estate, which she might create if unmarried.

§ 131. Where the execution of a power in trust shall be defective, in whole or in part, under the provisions of this article, its proper execution may be decreed, in equity, in favor of the persons designated as the objects of the trust.

§ 132. Purchasers for a valuable consideration, claiming under a defective execution of any power, shall be entitled to the same relief in equity, as similar purchasers, claiming under a defective conveyance from an actual owner.

§ 133. Where a power to sell lands shall be given to the grantee, in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in, and may be executed by any person, who, by assignment or otherwise, shall become entitled to the money so secured to be paid.

§ 134. The provisions of this article shall not extend to a simple power of attorney, to convey lands in the name, and for the benefit, of the owner.

§ 135. The term "grantor of a power," is used in this article, as designating the person by whom a power is created, whether by grant or devise; and the term "grantee of a power," is used as designating the person in whom a power is vested, whether by grant devise or reservation.

ART. 4.
Who may take under powers.
3 Duer, 95;
16 Wend., 324.
Married women, their authority, etc.

Defective executions.
3 N. Y., 278.

Id.
11 N. Y., 406.

Powers to sell in mortgages.
[738]
33 Hun, 520;
33 Hun, 616;
35 Hun, 681.

Application of this article.
23 Barb., 498; 39 N. Y., 1, 7.
Terms "grantor of a power," and "grantee of a power" defined.
11 N. Y., 401.

ARTICLE FOURTH.

OF ALIENATION BY DEED.

Sec. 136. Feoffment with livery of seisin, abolished.

137. Grants in fee or of freeholds, how executed; when to take effect.

138. Delivery essential to grants.

139. Covenants not implied in mortgages; remedy of mortgagee.

140. No covenants to be implied in conveyances of real estate.

141. Lineal and collateral warranties abolished; liability of heirs, etc.

142. Deeds of bargain and sale, and of lease and release, deemed grants.

143. No greater estate to pass by a conveyance, than such as grantor had.

144. Grants conclusive against certain purchasers.

145. Conveyances of greater estate by tenant for life or for years.

146. Conveyances of lands occupied, when valid without attornment.

147. Grant of lands possessed by claimant under adverse title, void.

148. But mortgages of such lands may be given; effect thereof.

§ 136. The mode of conveying lands by feoffment with livery of seisin, is abolished.

§ 137. Every grant in fee or of a freehold estate, shall be subscribed and sealed by the person from whom the estate or interest conveyed is intended to pass, or his lawful agent; if not duly acknowledged, previous to its delivery, according to the provisions of the third chapter of this act, its execution and delivery shall be

Livery of seisin.
41 N. Y., 78;
40 Hun, 453.
Grants in fee or of freeholds, how executed; when to take effect.

TITLE 2. attested by at least one witness; or if not so attested, it shall not take effect as against a purchaser or incumbrancer, until so acknowledged.

1 Abb. Ct. App. Dec., 36, 247; 3 Id., 443; 57 Barb., 247; 46 N. Y., 633; 48 N. Y., 644; 39 N. Y., 572, 585; 13 N. Y., 514; 31 Barb., 157; 17 Barb., 103; 6 Barb., 42; 2 Barb., 618; 2 Wend., 575; 6 Park. Cr. R., 636; 2 Sandf. Ch., 633; 2 Redf., 349; 6 Daly, 460; 62 N. Y., 105; 23 Hun, 437; 29 Hun, 399; 36 N. Y., 603; 24 Hun, 575.

Delivery.
6 Barb.,
103; 11
Wend., 247;
5 Wend.,
533; 50 N.
Y., 61; 1
Abb. Ct.
App. Dec., 247.

§ 138. A grant shall take effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law now in force in respect to the delivery of deeds, shall apply to grants hereafter to be executed.

**Covenants
in mort-
gages.
Remedies
of mort-
gages.**
3 Barb.,
Ch., 569; 2
Lans., 40;
44 How.,
Pr. R., 571;
5 Daly, 40;

§ 139. No mortgage shall be construed as implying a covenant for the payment of the sum intended to be secured; and where there shall be no express covenant for such payment, contained in the mortgage, and no bond or other separate instrument to secure such payment, shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

5 Hun, 407, 12 Daly, 310; 29 Hun, 534; 32 Hun, 485; 35 Hun, 456; 36 N. Y., 553, 513.

**Covenants
in convey-
ances.**

§ 140. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

53 N. Y., 398; 43 N. Y., 463; 40 N. Y., 143; 9 Bosw., 76; 7 Bosw., 507; 13 N. Y., 156; 9 N. Y., 543; 31 Barb., 551; 13 Barb., 284; 8 Paige, 566; 14 Wend., 39; Cl. Ch., 503; 1 Duer, 427; 11 Paige, 569; 20 Barb., 455; 15 Barb., 359; 39 Barb., 65; 36 Hun, 129; 32 Hun, 482; 33 Hun, 489; 36 Hun, 181; 36 Hun, 204, 204; 37 N. Y., 848.

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**Lineal and
collateral
warranties.**
17 Barb.,
165.

§ 141. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who shall have made any covenant or agreement, shall be answerable upon such covenant or agreement, to the extent of the lands descended or devised to them, in the cases and in the manner prescribed by law.

[1 R. L., 525, § 26.]

**Certain
deeds de-
clared
grants.**
1 N. Y., 248;
1 Abb. Ct.
App. Dec., 247.

§ 142. Deeds of bargain and sale, and of lease and release, may continue to be used, and shall be deemed grants; and as such shall be subject to all the provisions of this chapter, concerning grants.

**Effect of
certain
convey-
ances.**
3 Hun, 521;
9 N. Y., 51;
1 N. Y., 248;
41 N. Y., 78;
5 T. & C.,
570; 36
Hun, 459.

§ 143. No greater estate or interest shall be construed to pass by any grant or conveyance, hereafter executed than the grantor himself possessed at the delivery of the deed, or could then lawfully convey, except that every grant shall be conclusive as against the grantor and his heirs claiming from him by descent.

**How far
conclusive
on pur-
chasers.**
6 Barb.,
356; 69 N.
Y., 1; 35
Hun, 468.

§ 144. Every grant shall also be conclusive as against subsequent purchasers from such grantor, or from his heirs claiming as such, except a subsequent purchaser, in good faith and for a valuable consideration, who shall acquire a superior title by conveyance that shall have been first duly recorded.

**Convey-
ances by
tenants for**

§ 145. A conveyance made by a tenant for life or years of a greater estate than he possessed or could lawfully convey, shall not

work a forfeiture of his estate, but shall pass to the grantee all the title, estate or interest, which such tenant could lawfully convey.

ART. 4.

Life or 100 years.
1 N. Y., 248; 41 N. Y., 78.

§ 146. Where any lands or tenements shall be occupied by a tenant, a conveyance thereof, or of the rents or profits, or of any other interest therein, by the landlord of such tenant, shall be valid without any attornment of such tenant to the grantee; but the payment of rent to such grantor, by his tenant, before notice of the grant, shall be binding upon such grantee; and such tenant shall not be liable to such grantee for any breach of the condition of the demise, until he shall have had notice of such grant.

Attornment by tenant when unnecessary.
Liabilities of tenant.
4 N. Y., 128;
14 Bradf., 694; 37 Hun, 626.

[1 R. L., 525, § 25.]

§ 147. Every grant of lands shall be absolutely void, if at the time of the delivery thereof, such lands shall be in the actual possession of a person claiming under a title adverse to that of the grantor.

Conveyance of land adversely possessed.

20 How. Pr. R., 453; 2 Robt., 494; 5 Id., 716; 22 N. Y., 173; 26 Barb., 454; 30 Barb., 439; 17 Barb., 665; 15 Barb., 497; 3 Barb., 157; 4 Hill, 469; 3 Calnes, 182; 4 Duer, 454; 21 Wend., 98; 19 Barb., 644; 14 Barb., 441; 13 Barb., 147; 3 Duer, 35; 30 Barb., 321, 514; 53 N. Y., 286, 292; 46 N. Y., 634; 40 N. Y., 143, 304; 39 N. Y., 306; 53 Barb., 248; 17 Abb. Pr. R., 480; 9 Abb. Pr., N. S., 379; 2 Hun, 480; 5 Bosw., 334; 5 N. Y. S. C. R. (T. & C.), 70; 53 N. Y., 287; 18 Hun, 226; id., 284; 68 N. Y., 238; 68 N. Y., 412; 71 N. Y., 139; 73 N. Y., 94; 73 N. Y., 560; 70 N. Y., 308; 9 Hun, 481; 16 Hun, 129; 79 N. Y., 93; id., 390; 66 How. Pr., 85; 12 Abb. N. C., 113, 120; 19 J. & S., 1; 31 Hun, 293; 34 Hun, 566; 37 Hun, 575; 94 N. Y., 229, 309.

[1 R. L., 173, § 8.]

§ 148. But every person having a just title to lands, of which there shall be an adverse possession, may execute a mortgage on such lands; and such mortgage, if duly recorded, shall bind the lands from the time the possession thereof shall be recovered, by the mortgagor or his representatives. And every such mortgage shall have preference over any judgment or other instrument, subsequent to the recording thereof; and if there be two or more such mortgages, they shall severally have preference according to the time of recording the same respectively.

Mortgages may be given.
Effect thereof.

Priority of lien.
5 N. Y., 247;
41 Barb., 288; 17 Abb. Pr. R., 480; 31 Hun, 293.

TITLE III.

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Of Estates in Dower.

- Sac. 1. Of what widows shall be endowed.
2. Widows of aliens, if inhabitants, entitled to dower.
3. Dower in case of exchange of lands.
4. Dower in lands mortgaged before marriage.
5. In lands mortgaged for purchase money.
6. Claim to one-third of surplus proceeds of sale, in such case.
7. Widow of mortgagee not entitled to dower.
8. Dower forfeited by divorce for her misconduct.
9. Settlements by jointure, with her assent, to bar dower.
10. How her assent to jointure to be evidenced.
11. Pecuniary provision in lieu of dower, when to bar it.

- TITLE 3.** Smo. 12. If jointure, etc., made without her assent, she to elect.
 13. If provision in lieu of dower be made by will, to elect.
 14. Deemed to have elected, unless she enter or sue, within a year.
 15. Jointures, etc., in lieu of dower, forfeited in same cases as dower.
 16. Acts of husband, judgments, etc., not to affect right to dower, etc.
 17. Widow entitled to remain in husband's house 40 days.
 18 to 24. [Repealed.]
 25. Widow may bequeath crops growing in her dower land.

Dower of
widows.

SECTION 1. A widow shall be endowed of the third part of all the lands, whereof her husband was seised of an estate of inheritance, at any time during the marriage.

50 N. Y., 161, 164; 43 N. Y., 441; 56 Barb., 264; 3 Lans., 41; 4 Robt., 702; 1 T. & C., 56; 15 Abb., N. S., 220; 50 N. Y., 161; 53 N. Y., 296; 10 Hun., 104; 53 How. Pr. R., 97; 9 Hun., 514; 7 Abb. N. C., 238; 3 Redf., 84; 8 N. Y., 110; 5 N. Y., 394, 503; 4 N. Y., 26; 23 Barb., 125; 18 Barb., 561; 15 Barb., 485; 13 Barb., 106; 12 Barb., 291, 537; 11 Barb., 152; 8 Barb., 461; 5 Barb., 824; 3 Barb., 319; 1 Barb., 369; 21 Wend., 66; 16 Wend., 617-621; 12 Wend., 66; 11 Wend., 592; 10 Wend., 486; 7 Paige, 229; 1 Paige, 634; 2 Denio, 430; 3 Edw., 437; 6 Johns. Ch. R., 258; 4 Johns. Ch. R., 604; 13 Johns. R., 180; 2 Johns. R., 123; 7 Cow., 357; 5 Cow., 389; 1 Cow., 463; 31 How. Pr. R., 496; 23 Hun., 235; 30 Hun., 446, 556; 33 Hun., 76; 37 Hun., 227; 38 Hun., 526; 41 Hun., 486; 37 N. Y., 153.

[1 R. L., 56, § 1.]

Widows of
aliens.

21 Wend.,
62; 12
Wend., 66;
5 Cow., 713;
43 N. Y.,
441; 1 Abb.
Ct. App.

§ 2. The widow of any alien, who, at the time of his death, shall be entitled by law to hold any real estate, if she be an inhabitant of this state, at the time of such death, shall be entitled to dower, of such estate, in the same manner as if such alien had been a native citizen.

Dower in
case of ex-
change of
lands.
12 Barb.,
537; 7
Barb., 638;
42 Barb.,
365; 28 Hun.,
235.

§ 3. If a husband, seised of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but shall make her election, to be endowed of the lands given, or of those taken, in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

Lands,
before
marriage.
56 Barb.,
284; 8
Barb., 618;
1 Barb.,
399, 407; 13
How. Pr.
R., 296; 42

§ 4. Where a person seised of an estate of inheritance in lands shall have executed a mortgage of such estate, before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

In lands
mortgaged

[741]

for pur-
chase
money.
50 N. Y., 10;
15 Johns.
R., 458; 10
Paige, 49;

§ 5. Where a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.

In such
case, ex-
tent of
claim to
surplus
proceeds
of sale.

8 Barb., 618;
50 N. Y., 10.

§ 6. Where, in such case, the mortgagee, or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged to be sold, either under a power of sale contained in the mortgage, or by virtue of the decree of a court of equity, and any surplus shall remain, after payment of the monies due on such mortgage and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus, for her life, as her dower.

§ 7. A widow shall not be endowed of lands conveyed to her husband by way of mortgage, unless he acquire an absolute estate therein, during the marriage.

§ 8. In case of divorce, dissolving the marriage contract, for the misconduct of the wife, she shall not be endowed.

198; 3 Abb., 180; 16 Abb., N. S., 112; id., 268; 35 Barb., 482; 52 N. Y., 563; 45 How. 43 Hun, 461; 3 Bosw., 665; 64 N. Y., 47.

[1 R. L., 53, § 7, and 2 R. L., 196, § 8.]

§ 9. Whenever an estate in lands shall be conveyed to a person and his intended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such wife alone, for the purpose of creating a jointure for such intended wife, and with her assent, such jointure shall be a bar to any right or claim of dower of such wife, in any lands of the husband.

[1 R. L., 58 and 59, §§ 8 and 9.]

§ 10. The assent of the wife to such jointure shall be evidenced, if she be of full age, by her becoming a party to the conveyance by which it shall be settled; if she be an infant, by her joining with her father or guardian in such conveyance.

App. Dec., 322; 3 Bosw., 327.

§ 11. Any pecuniary provision that shall be made for the benefit of an intended wife and in lieu of dower, shall, if assented to by such intended wife, as above provided, be a bar to any right or claim of dower of such wife in all the lands of her husband.

Palge, 447; 6 Johns. Ch. R., 194; 71 N. Y., 154; 3 Abb. N. C., 295.

§ 12. If before her coverture, but without her assent, or if after her coverture, lands shall be given or assured for the jointure of a wife, or a pecuniary provision be made for her, in lieu of dower, she shall make her election whether she will take such jointure or pecuniary provision, or whether she will be endowed of the lands of her husband, but she will not be entitled to both.

Barb., 412; 16 Abb. N. C., 297; 37 Hun, 231; 104 N. Y., 418.

[1 R. L., 58 and 59, §§ 8 and 9.]

§ 13. If lands be devised to a woman, or a pecuniary or other provision be made for her by will, in lieu of her dower, she shall make her election whether she will take the lands so devised, or the provision so made, or whether she will be endowed of the lands of her husband.

Barb., 20; 5 Hill, 206; 3 Bradf., 195; 3 id., 77; 13 Barb., 106; 1 Tucker, 11; 9 Hun, Y., 278; 2 Redf., 48; 53 How. Pr. R., 400; 58 N. Y., 69; 9 J. & S., 543; 19 J. & S., 395; 29 Hun, 318; 37 Hun, 265; 39 Hun, 264, 451; 94 N. Y., 605; 104 N. Y., 418, 125; 18 Abb. Hun, 418.

§ 14. When a woman shall be entitled to an election, under either of the two last sections, she shall be deemed to have elected to take such jointure, devise or pecuniary provision, unless within one year after the death of her husband she shall enter on the lands to be assigned to her for her dower, or commence proceedings for the recovery or assignment thereof.

§ 15. Every jointure, devise and every pecuniary provision in lieu of dower, shall be forfeited by the woman for whose benefit it shall be made, in the same cases in which she would forfeit her dower; and upon such forfeiture, any estate so conveyed for jointure, and every pecuniary provision so made, shall immediately vest in the person or his legal representatives, in whom they would have vested

TITLE 3.

Widow of mortgagor.

When dower forfeited.
4 Barb., 192;
34 Wend.,
Pr. R., 46;
N. Y., 47.

When barred by jointure.

3 Abb. Ct. App. Dec., 322; 3 Bosw., 327;
4 Abb. Pr., N. S., 428;
3 Paige, 539;
2 Abb. Ct. App. Dec., 322; 3 Bosw., 327.

Evidence of her assent.

4 Abb. Pr., N. S., 428; 3 Paige, 539;
2 Abb. Ct. App. Dec., 322; 3 Bosw., 327.

When dower barred by pecuniary provisions.
1 Johns. R., 307; 5 N. C., 295.

When to elect between jointure, &c., and dower.

5 Paige, 447; 6 Johns. Ch. R., 194; 36 N. Y., 418.

When between devise, &c., and dower.

9 N. Y., 511;
7 Cow., 288;
5 Paige, 447; 3 Hill, 206; 3 Denio, 490; 4 Sps., 64 N. C., 295;
3 Dem., 620;
N. C., 62; 45 Hun, 418.

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When deemed to have elected.

4 Hun, 787;
43 N. Y., 441;
3 Lana., 384;
378; 3 Dem., 620; 39 Hun, 264.

When jointure, &c., forfeited.

3 Bosw., 685; 1 Tucker, 11.

TITLE 4. on the determination of her interest therein, by the death of such woman.

Right to dower, &c., not affected by acts of husband, nor by judgments, &c., against him.

2 N. Y., 249; 4 Barb., 201; 8 Edw., 437; 1 Edw., 349; 7 Barb., 388; 50 N. Y., 165; 37 N. Y., 227; 95 N. Y., 51; 103 N. Y., 153.
[1 R. L., 57 and 59, §§ 4 and 10.]

May remain in husband's house 40 days.

1 Sandf. S. C., 218; 10 Wend., 419; 31 How. Pr.

§ 17. A widow may tarry in the chief house of her husband, forty days after his death, whether her dower be sooner assigned to her or not, without being liable to any rent for the same, and in the mean time she shall have her reasonable sustenance out of the estate of her husband.

R., 490; 4 Robt., 702.

[1 R. L., 57, § 1.]

[743]

[Sections 18 to 24 were repealed by L. 1880, ch. 245.]

May bequeath crops. 1 T. & C., 56.

§ 25. A widow may bequeath the crop in the ground of the land holden by her in dower.

[1 R. L., 368, § 17.]

TITLE IV.

Of Estates for Years, and at will; and the Rights and Duties of Landlords and Tenants.

Smc. 1. Construction of certain agreements for use of lands, etc., in New York.

2. Effect of new lease, after surrender of former lease.

3. Attornments by tenants void, except in certain cases.

4, 5 & 6. [Repealed.]

7. Tenancy at will or by sufferance, may be terminated by notice.

8. How notice to be served.

9. Rights of landlord on expiration of notice.

10. Penalty on tenant for not yielding possession after giving notice.

11. Penalty on tenants, etc., for holding over after notice to quit.

12 to 17. [Repealed.]

[744]

18. Right to distrain for rents or services, declared.

19. Remedy by action for rent due on leases for life.

20. Rents dependent on life of another, how recovered after his death.

21. Remedy of executors, etc., for arrears of rent.

22. Rights of executors, etc., of tenant for life having rent due.

23. Rights of grantors, assignees, etc., of lessor of demised lands.

24. Rights of lessors and their assignees, etc.

25. Two last sections to extend to leases in fee, for life or for years.

26. When landlord may recover for use and occupation.

27. Penalty on tenant for not delivering process, notices, etc., served on him.

Duration of certain agreements in

SECTION I. Agreements for the occupation of lands or tenements, in the city of New York, which shall not particularly specify the

duration of such occupation, shall be deemed valid until the first day of May next after the possession under such agreement shall commence, and the rent under such agreement shall be payable at the usual quarter days for the payment of rent in the said city, unless otherwise expressed in the agreement.

[4 E. D. Smith, 176; 9 E. D. Smith, 106; 8 How. Pr. R., 141; 4 Abb. Pr. R., N. S., 144; [L. 1820, 178, § 4.]

§ 2. If any lease be surrendered in order to be renewed, and a new lease be made by the chief landlord, such new lease shall be good and valid to all intents and purposes, without a surrender of all or any of the under leases derived out of such original lease so surrendered; and the chief landlord, his lessee, and the holders of such under leases, shall enjoy all their rights and interests, in the same manner and to the same extent, as if the original lease had been still continued; and the chief landlord shall have the same remedy by distress, or entry upon the demised premises for the rents and duties secured by such new lease, so far as the same do not exceed the rents and duties reserved in the original lease so surrendered.

[1 R. L., 442, §§ 26 and 28.]

§ 3. The attornment of a tenant to a stranger shall be absolutely void, and shall not in any wise affect the possession of his landlord, unless it be made,

1. With the consent of the landlord: or,
2. Pursuant to, or in consequence of, a judgment at law, or the order or decree of a court of equity: or,
3. To a mortgagee after the mortgage has become forfeited.

[The same.]

[Sections 4 to 6 repealed by L. 1880, ch. 245.]

§ 7. Wherever there is a tenancy at will, or by sufferance created, by the tenant's holding over his term, or otherwise, the same may be terminated by the landlord's giving one month's notice in writing to the tenant, requiring him to remove therefrom.

14 N. Y., 61; 14 Barb., 255; 12 Barb., 484; 8 Barb., 579; 7 Cow., 747; 4 Denio, 187; 19 How. Pr. R., 31; 11 Wend., 616; 5 Duer, 559; 31 N. Y., 454; 51 N. Y., 54, 648; 48 N. Y., 450; 2 Sweeney, 70; 14 Abb., N. S., 130; 60 N. Y., 102; 4 Hun, 451; 4 Hun, 151; 70 N. Y., 180; 60 N. Y., 102; 6 Daly, 506; 15 Hun, 475; 5 Hun, 28.

[L. 1820, 177, proviso to § 1.]

§ 8. Such notice shall be served by delivering the same to such tenant, or to some person of proper age residing on the premises; or if the tenant can not be found, and there be no such person residing on the premises, such notice may be served by affixing the same on a conspicuous part of the premises, where it may be conveniently read.

§ 9. At the expiration of one month from the service of such notice, the landlord may re-enter, or maintain ejectment, or proceed in the manner prescribed by law, to remove such tenant, without any further or other notice to quit.

[The same.]

§ 10. If any tenant shall give notice of his intention to quit the premises by him holden, and shall not accordingly deliver up the possession thereof, at the time in such notice specified, such

TITLE 4.

New York.
5 Robt., 261;
7 Robt., 416;
2 Sweeney,
70; 21
Wend., 338;
5 Duer, 559;
5 Hun, 128;
17 Hun, 319.

Effect of
new lease
after sur-
render of
former
lease.
14 N. Y., 22.

Attorn-
ments by
tenants.
5 N. Y., 404;
25 Barb.,
249; 19
How. Pr.
R., 298; 40
N. Y., 109;
37 Hun, 636.

[745]
Tenancy
at will, etc.,
terminated
by notice.

How
served.
11 Wend.,
620; 4
Denio, 187.

Rights of
landlord.
14 Barb.,
255; 13
Barb., 484;
4 Denio,
187; 31 N.
Y., 456; 1
Lans., 339.

Penalty on
tenant for
not yield-
ing posses-

TITLE 4.
 sion after
 giving
 notice.

tenant, his executors or administrators, shall, from thenceforward, pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be levied, sued for and recovered, at the same time and in the same manner, as the single rent; and such double rent shall be continued to be paid during all the time such tenant shall continue in possession as aforesaid.

[1 R. L., 440, § 22.]

Penalty on
 tenants,
 &c., for
 holding
 over after
 notice to
 quit.
 81 N. Y.
 454; 51 N.
 Y., 539, 541.

§ 11. If any tenant, for life or years, or if any other person who may have come into the possession of any lands or tenements, under or by collusion with such tenant, shall wilfully hold over any lands or tenements after the termination of such term, and after demand made and one month's notice, in writing, given in the manner herein before prescribed, requiring the possession thereof by the person entitled thereto, such person so holding over shall pay to the person so kept out of possession, or his representatives, at the rate of double the yearly value of the lands or tenements so detained, for so long a time as he shall so hold over or keep the person entitled, out of possession; and shall also pay and remunerate all special damages whatever, to which the person so kept out of possession may be subjected by reason of such holding over; and there shall be no relief in equity against any recovery had at law under this section.

No relief in
 equity.

[1 R. L., 440, § 21, and L. 1890, 179, § 8.]

[Section 12-17 were repealed by L. 1846, ch. 274.]

[747]
 Right to
 distrain.
 2 N. Y., 152;
 2 Hill, 649;
 8 Paige, 217.

§ 18. When any certain services or certain rent reserved out of any lands or tenements, shall not be paid or rendered when due, the person entitled thereto, may distrain for the same.

[This section has been practically obsolete since L. 1846, ch. 274, which abolished distress for rent.]

Remedy on
 leases for
 life.
 13 N. Y.,
 808; 2 N.
 Y., 183; 33
 Barb., 451;
 1 Barb.,

§ 19. Any person having any rent due upon any lease for life or lives, may have the same remedy to recover such arrears, by action of debt, as if such lease were for years.

27 Barb., 110, 21 Barb., 648; 18 Barb., 158; 9 Barb., 302; 8 Barb., 502; 2 Barb., 319;
 377; 4 Denio, 374; 3 Denio, 274.

[1 R. L., 438, §§ 16, 18, 19, 20 and 27.]

Rents de-
 pendent on
 life of an-
 other.

§ 20. Every person entitled to any rents dependent upon the life of any other, may, notwithstanding the death of such other person, have the same remedy by action or by distress, for the recovery of all arrears of such rent, that shall be behind and unpaid at the death of such other person, as he might have had if such person was in full life.

[See note to section 18, *ante*.]

Remedy of
 executors,
 &c., for
 arrears of
 rent.
 30 Barb.,
 274; 5 Cow.,
 502.

§ 21. The executors or administrators of every person to whom any rent shall have been due and unpaid at the time of his death, may have the same remedy by action or by distress, for the recovery of all such arrears, that their testator or intestate might have had, if living.

[The same.]

Executors,
 &c., of te-
 nant for
 life.
 3 Bradf.,
 359.

§ 22. When a tenant for life, who shall have demised any lands, shall die on or after the day when any rent became due and payable, his executors or administrators may recover from the under tenant, the whole rent due; if he die before the day when any rent is to

become due, they may recover the proportion of rent which accrued TITLE 4.
before his death.

§ 23. The grantees of any demised lands, tenements, rents or other hereditaments, or of the reversion thereof, the assignees of the lessor of any demise, and the heirs and personal representatives of the lessor, grantee or assignee, shall have the same remedies by entry, action, distress or otherwise, for the non-performance of any agreement contained in the lease so assigned, or for the recovery of any rent, or for the doing of any waste or other cause of forfeiture, as their grantor or lessor had, or might have had, if such reversion had remained in such lessor or grantor.

458; 27 Barb., 173; 13 Barb., 462; 2 Hill, 278, 475; 5 Denio, 137; 13 Wend., 809; 2 Hilt., 440; 68 Barb., 279; 41 N. Y., 224; 1 Robt., 466; 7 Id., 120; 1 Edm. Select Cases, 205; 17 Hun, 319.

[1 R. L., 363.]

§ 24. The lessees of any lands, their assigns or personal representatives, shall have the same remedy by action or otherwise against the lessor, his grantees, assignees, or his or their representatives, for the breach of any covenant or agreement in such lease contained, as such lessee might have had against his immediate lessor, except covenants against incumbrances, or relating to the title or possession of the premises demised.

[The same.]

§ 25. The provisions of the last two sections shall extend as well to grants or leases in fee, reserving rents, as to leases for life and for years.

19 N. Y., 100; 33 Barb., 458; 27 Barb., 173; 13 Barb., 462; 46

[The same. Repealed as to future conveyances; see L. 1860, ch. 396, *post.*]

§ 26. Any landlord may recover in an action on the case, a reasonable satisfaction for the use and occupation of any lands or tenements, by any person under any agreement not made by deed: and if any parol demise or other agreement, not being by deed, by which a certain rent is reserved, shall appear in evidence on the trial of any such action, the plaintiff shall not on that account be debarred from a recovery, but may make use thereof as evidence of the amount of the damages to be recovered.

194; 7 Hill, 88; 1 Hilt., 55, 185; 6 Johns. R., 46; 1 Denio, 87; 1 Wend., 134; 7 Wend., 109; R., 240, 297, 489; 2 Sweeny, 395; 1 Hun, 154; 5 N. Y. S. C. R. (T. & C.), 685.

[1 R. L., 444, § 81.]

§ 27. Every tenant to whom a declaration in ejectment, or any other process, proceeding or notice of any proceeding, to recover the land occupied by him, or the possession thereof, shall be served, shall forthwith give notice thereof to his landlord, under the penalty of forfeiting the value of three years rent of the premises so occupied by him, which may be sued for and recovered by the landlord or person of whom such tenant holds.

[1 R. L., 443, § 29.]

L. 1860, Chap. 345—An act in relation to the rights and liabilities of owners and lessors, and of lessees and occupants of buildings.

Tenants need not pay rent in certain cases. SECTION 1. The lessees or occupants of any building which shall, without any fault or neglect on their part, be destroyed, or be so injured by the elements, or any other cause, as to be untenable and unfit for occupancy, shall not be liable or bound to pay rent to the

Rights of grantees, assignees, &c., of lessor of demised lands. 1 Abb. Pr. R. N. S., 106; 2 Daly, 301; 19 N. Y., 82; 13 N. Y., 226; 14 N. Y., 22; 6 N. Y., 491; 33 Barb., 6; 46 Barb., 17 Hun, 319.

Rights of lessees and their assignees, &c. 7 Robt., 120; 10 Bosw., 163; 12 N. Y., 301; 27 Barb., 173; 13 Barb., 462; 4 Sandf. S. C., 516; 46 Barb., 440. [748] Application of two last sections. Barb., 440.

When landlords may recover for use and occupation. 60 Barb., 477; 4 Abb. Pr. R. N. S., 144; 7 Robt., 415; 15 N. Y., 328; 26 Barb., 249; 7 Barb., 13 Johns. & C.), 685.

Penalty on tenant for not delivering, &c., notice served on him. 4 Abb. Ct. App. Dec., 307; 6 Bosw., 493.

lessors or owners thereof, after such destruction or injury, unless otherwise expressly provided by written agreement or covenant, and the lessees or occupants may thereupon quit and surrender possession of the leasehold premises, and of the land so leased or occupied.

26 N. Y., 498; 29 How. Pr. R., 262; 55 N. Y., 280; 54 N. Y., 450; 45 N. Y., 123; 35 N. Y., 123; 45 How. Pr. R., 127; 42 How. Pr. R., 64; 7 Abb. Pr. R. (N. S.), 29; 1 Sweeney, 38; 2 Sweeney, 188; 61 N. Y., 358; 1 Sheld., 208; 67 Barb., 66; 13 Abb. N. C., 442; 14 Abb. N. C., 60; 17 W. D., 452; 33 Hun, 567; 34 Hun, 250; 87 N. Y., 98; 94 N. Y., 401; 13 Daly, 548, 555.

L. 1860, Chap. 396—An act to repeal chapter ninety-eight of the laws of eighteen hundred and five, and the subsequent re-enactment thereof.

Former acts restricted. SECTION 1. Chapter ninety-eight of the laws of eighteen hundred and five, passed April ninth, eighteen hundred and five, entitled "An act to amend an act entitled 'An act to enable grantees of reversions to take advantage of the conditions to be performed by lessees,'" and section three of chapter thirty-one of the revised laws, passed March nineteenth, eighteen hundred and thirteen, being a re-enactment of said chapter ninety-eight of the laws of eighteen hundred and five, and section twenty-five of chapter one, title four, part two of the Revised Statutes, being a further re-enactment of the same, shall not apply to deeds of conveyance in fee made before the ninth day of April, eighteen hundred and five, nor to such deeds hereafter to be made.

12 N. Y., 301, 406; 27 Barb., 173; 32 Barb., 453, 463, 473; 12 Barb., 462; 4 Sandf., 516; 1 Robt., 466; 7 Robt., 120; 1 Abb. Pr. R. (N. S.), 106.

L. 1873, Chap. 583—An act to define some of the rights and responsibilities of landlords and tenants.

When lease to become void. SECTION 1. Whenever the lessee or occupant, other than the owner of any building or premises, shall use or occupy the same, or any part thereof, for any illegal trade, manufacture or other business, the lease or agreement for the letting or occupancy of such building or premises shall thereupon become void, and the landlord of such lessee or occupant may enter upon the premises so let or occupied. [*The remainder of this section repealed by L. 1880, ch. 245.*]

[See Code Civ. Proc., § 2231.]

14 Hun, 68.

Liability of owner leasing for illegal business. § 2. The owner or owners of any building or premises knowingly leasing or giving possession of the same, to be used or occupied, in whole or in part, for any illegal trade, manufacture or business, or knowingly permitting the same to be used for any illegal trade, manufacture or business, shall be jointly and severally liable with the tenant or tenants, occupant or occupants, for any damage that may result by reason of such illegal use, occupancy, trade, manufacture or business.

TITLE V.

Miscellaneous Provisions of a General Nature.

- Smo. 1. Words of inheritance not necessary to convey a fee, etc.
 2. Intent of parties to conveyances, to be carried into effect.
 3. [Repealed.]
 4. Heirs and devisees to extinguish mortgages on lands coming to them.
 5-9. [Repealed.]
 10. Definition of terms "real estate" and "lands."
 11. Vested rights, and construction of instruments, not to be affected.

SECTION 1. The term "heirs," or other words of inheritance, shall not be requisite to create or convey an estate in fee: and every grant or devise of real estate, or any interest therein, hereafter to be executed, shall pass all the estate or interest of the grantor or testator, unless the intent to pass a less estate or interest shall appear, by express terms, or be necessarily implied in the terms of such grant.

6 Lans., 19; 7 Id., 224, 505; 4 Hun, 725; 5 Lans., 444, 485; 2 Abb., Ct. Ap. Dec., 179; 63 Barb., 590; 2 Lans., 277; 3 Abb. Pr. R., N. S., 202; 56 Barb., 608; 4 Abb. Ct. App. Dec., 216; 2 Robt., 402; 36 N. Y., 268; 63 N. Y., 80, 233; 50 N. Y., 302; 47 N. Y., 514; 12 N. Y., 128; 7 N. Y., 163; 5 N. Y., 452; 4 N. Y., 56; 26 Barb., 564; 28 Barb., 408; 19 Barb., 464; 15 Barb., 111; 12 Barb., 460; 16 How. Pr. R., 99; 17 How. Pr. R., 279; 16 J. & S., 326; 32 Hun, 435; 36 Hun, 70; 39 Hun, 128.

§ 2. In the construction of every instrument creating or conveying, or authorising the creation or conveyance of, any estate or interest in lands, it shall be the duty of courts of justice, to carry into effect the intent of the parties, so far as such intent can be collected from the whole instrument, and is consistent with the rules of law.

49 Barb., 134; 45 N. Y., 604; 36 N. Y., 595; 8 N. Y., 539; 32 Barb., 45; 13 Barb., 197; 5 Barb., 103; 3 Barb., 368; 23 Wend., 439; 8 Bosw., 190; 6 Lans., 89; 1 Robt., 277; 4 N. Y. S. C. R. (T. & C.), 47; 9 Paige, 116; 1 Sandf. Ch., 275; 3 Sandf. S. C., 110; 3 Duer, 554; 20 How. Pr. R., 331; 11 Abb., 37; 25 Hun, 596; 17 Hun, 447; 29 Hun, 599; 36 Hun, 460; 92 N. Y., 448, 454; 97 N. Y., 257, 534.

[Section 3 was repealed by L. 1880, ch. 245.]

§ 4. Whenever any real estate, subject to a mortgage executed by any ancestor or testator, shall descend to an heir, or pass to a devisee, such heir or devisee shall satisfy and discharge such mortgage, out of his own property, without resorting to the executor or administrator of his ancestor, unless there be an express direction in the will of such testator, that such mortgage be otherwise paid.

R., 206; 4 Bradf., 324; 43 N. Y., 525; 47 Barb., 151; 38 Barb., 429; 27 Barb., 45, 630; 10 Paige, 404; 9 Paige, 454; 11 Paige, 269; 32 N. Y., 587; 18 Abb., 206; 1 Lans., 119; 1 Dem., 153, 370; 13 Abb. N. C., 110; 39 Hun, 112; 63 N. Y., 52; 86 N. Y., 434; 34 Hun, 109.

[Sections 5 to 9 were repealed by L. 1880, ch. 245.]

§ 10. The terms "real estate," and "lands," as used in this chapter, shall be construed as co-extensive in meaning with lands, tenements and hereditaments.

§ 11. None of the provisions of this chapter, except those converting formal trusts into legal estates, shall be construed as altering or impairing any vested estate, interest or right; or as altering or affecting the construction of any deed, will or other instrument, which shall have taken effect at any time before this chapter shall be in force as a law.

Certain words not necessary to pass a fee. All the estate of grantor to pass, unless, &c.

Duty of courts in construing conveyances.

[749]

Mortgages on lands inherited or devised, by whom to be paid.

2 Robt., 523; 2 N. Y. S. C. R. (T. & C.), 6; 18 Abb. Pr.

Paige, 163; Redf., 211; Hun, 109.

[750]

"Real estate" and "lands" defined.

3 N. Y., 376; 39 Barb., N. Y., 560.

Vested rights, and construction of instruments, not to be affected. 32 Barb., 429; 8 Paige, 304; 44 N. Y., 366.

L. 1840, Chap. 387—An act authorizing mortgagees to redeem real estate sold for taxes and assessments.

Lien of mortgage not destroyed by tax sale. SECTION 1. No sale of real estate hereafter made for the non-payment of any tax or assessment shall destroy or in any manner affect the lien of any mortgage thereon duly recorded or registered at the time of such sale except as hereinafter provided.

4 Hill, 613.

Purchaser to give notice to mortgagee. § 2. It shall be the duty of the purchaser at such sale to give to the mortgagee a written notice of such sale, requiring him to pay the amount of the purchase money, with the interest at the rate allowed by law thereon, within six months after the giving of such notice.

Effect of redemption by mortgagee. § 3. If such payment shall be made the sale shall be of no further effect, and the mortgagee shall have a lien on the premises, for the amount paid, with the interest which may thereafter accrue thereon, at the rate of seven per cent per annum, in like manner as if the same had been included in his mortgage.

Failure to redeem. § 4. In case the mortgagee shall fail to make such payment, within the time so limited, he shall not be entitled to the benefit of the first section of this act.

Construction of certain terms. § 5. The term "mortgagee," as used in this act, shall be construed to include assignees whose assignment shall be duly recorded, and personal representatives; and the term "purchaser" shall be construed to include assignees, and real or personal representatives, as the case may be.

Notice how given; evidence of notice. § 6. The notice required by this act may be given either personally or in the manner required by law in respect to notices of non-acceptance or non-payment of notes or bills of exchange; and a notarial certificate thereof shall be presumptive evidence of the fact of such notice; such certificates may be recorded in the county in which the mortgage was recorded, in the same manner, and with same effect, as is by law prescribed in respect to deeds or other evidences of title of real estate.

[The foregoing act, L. 1840, ch. 387, was expressly repealed by L. 1850, ch. 298, § 114, which latter act was expressly repealed by L. 1855, ch. 427, § 92, without providing against the revival of the act of 1840. The editor has therefore inserted here the act of 1840. Here it should be observed, however, that the act of 1855 contained a series of sections (76-81), which were, with a few formal variations, an exact transcript of the act of 1840; and two of which sections (77 and 81) were amended by L. 1870, ch. 280. See *ante*, pp. 1142, 1143.]

CHAPTER II.

OF TITLE TO REAL PROPERTY BY DESCENT.

- Sec.**
1. General rule as to the order in which real estate shall descend.
 2. Rule as to lineal descendants in equal degrees of consanguinity.
 3. Rule when any children are living and any have died leaving descendants.
 4. Rule in last section to apply to all descendants of unequal degrees.
 5. In what cases inheritance to go to father.
 6. When inheritance to go to mother for life; when in fee.
 7. When collateral relatives to inherit; rule if there are several of equal degrees.
 8. Brothers and sisters and their descendants, when and in what shares, to inherit.
 9. Rule in last section to apply to all other direct lineal descendants of brothers and sisters, of unequal degrees.
 10. Brothers and sisters of father, and their descendants, when, and in what shares, to inherit.
 11. When brothers and sisters of mother, and their descendants, to inherit.
 12. In what case brothers and sisters of mother, and their descendants, to be preferred to those of father.
 13. When brothers and sisters of both father and mother, and their descendants, to inherit equally.
 14. When mother of illegitimate intestate, and her descendants, to inherit.
 15. Rule as to relatives of the half blood.
 16. In cases not provided for, rules of common law to prevail.
 17. Rule when but one heir; when several, to hold as tenants in common.
 18. Posthumous descendants and relatives, to inherit as if born in life of intestate.
 19. Illegitimate children and relatives, not to inherit.
 20. This chapter not to affect estates by the curtesy, or in dower, or limitations by deed or will. [751]
 21. Descent of estates in trust.
 22. Alienism of ancestor not to preclude inheritance.
 23. Advancement of real and personal estate, if equal to share of an heir, to be set off against it.
 24. If not equal, to be deducted, so that all the shares may be equal.
 25. Value of advancement, how ascertained.
 26. Certain expenses and gifts, not to be deemed advancements.
 27. Definition of terms "real estate" and "inheritance."
 - 28 & 29. Construction of certain expressions used in this chapter.

SECTION 1. After this chapter shall take effect, the real estate of every person, who shall die without devising the same, shall descend in manner following.

1. To his lineal descendants:
2. To his father:
3. To his mother; and
4. To his collateral relatives:

Subject in all cases to the rules and regulations hereinafter prescribed.

Id., 507; 19 Hun, 313; 79 N. Y., 335; 87 Hun, 254; 91 N. Y., 315.

§ 2. If the intestate shall leave several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, the inheritance shall descend to such persons in equal parts, however remote from the intestate, the common degree of consanguinity may be.

[1 R. L., § 3, first rule.]

§ 3. If any of the children of such intestate be living, and any be dead, the inheritance shall descend to the children who are living,

General rule as to the order in which real estate shall descend.

2 Denio, 9; 57 How. Pr., 329; 67 N. Y., 556; 68 N. Y., 227; 71 N. Y., 474; 15 Hun, 399; 18 Hun, 73; N. Y., 315.

Lineal descendants being in equal degrees.

Children living, and descend

ants of
dead chil-
dren.
8 Edw.
Ch., 361;
79 N. Y.,
527.

and to the descendants of such children as shall have died; so that each child who shall be living, shall inherit such share as would have descended to him, if all the children of the intestate who shall have died leaving issue, had been living; and so that the descendants of each child who shall be dead, shall inherit the share, which their parent would have received if living.

[1 R. L., 52, § 3, second rule.]

Rule in last
section to
apply to all
descend-
ants of un-
equal de-
grees.

§ 4. The rule of descent prescribed in the last section, shall apply in every case where the descendants of the intestate, entitled to share in the inheritance, shall be of unequal degrees of consanguinity to the intestate; so that those who are in the nearest degree of consanguinity, shall take the shares which would have descended to them, had all the descendants in the same degree of consanguinity, who shall have died, leaving issue, been living; and so that the issue of the descendants who shall have died, shall respectively take the shares, which their parents, if living, would have received.

[The same.]

When •
father to
inherit.
37 Hun, 254.

§ 5. In case the intestate shall die without lawful descendants, and leaving a father, then the inheritance shall go to such father, unless the inheritance came to the intestate on the part of his mother, and such mother be living; but if such mother be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate, and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; if there be no such brothers or sisters, or their descendants living, such inheritance shall descend to the father in fee. [Thus amended by L. 1830, ch. 320, § 13.]

[Id., 3d rule.]

[759]
When
mother to
inherit for
her life.
When to
inherit in
fee.
52 N. Y., 67,
70; 57 N. Y.,
276.

§ 6. If the intestate shall die without descendants and leaving no father, or leaving a father not entitled to take the inheritance under the last preceding section, and leaving a mother, and a brother or sister, or the descendant of a brother or sister, then the inheritance shall descend to the mother during her life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance herein after provided. If the intestate in such case, shall leave no brother or sister, nor any descendants of any brother or sister, the inheritance shall descend to the mother in fee.

Collateral
relatives.
Rule when
all of dif-
ferent de-
grees.
31 Barb.,
658; 23
Barb., 301.

§ 7. If there be no father or mother, capable of inheriting the estate, it shall descend, in the cases herein after specified, to the collateral relatives of the intestate; and if there be several such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from the intestate, the common degree of consanguinity may be.

[1 R. L., 52, § 3, 4th and 5th rules.]

Brothers
and sisters.
Their de-
scendants.
31 Barb.,
658; 21
Wend., 130;
10 Paige,
148; 6
Sandf., 418.

§ 8. If all the brothers and sisters of the intestate be living, the inheritance shall descend to such brothers and sisters; if any of them be living, and any be dead, then to the brothers and sisters, and every of them who are living, and to the descendants of such brothers and sisters as shall have died; so that each brother or sister who shall be living, shall inherit such share as would have descended to

him or her, if all the brothers and sisters of the intestate, who shall have died leaving issue, had been living; and so that such descendants shall inherit the share, which their parent would have received, if living.

[The same.]

§ 9. The same law of inheritance, prescribed in the last section, shall prevail, as to the other direct lineal descendants of every brother and sister of the intestate, to the remotest degree, whenever such descendants are of unequal degrees.

§ 10. If there be no heir entitled to take under either of the preceding sections, the inheritance, if the same shall have come to the intestate on the part of his father, shall descend,

1. To the brothers and sisters of the father of the intestate in equal shares, if all be living:

2. If any be living, and any shall have died leaving issue, then to such brothers and sisters as shall be living, and to the descendants of such of the said brothers and sisters as shall have died:

3. If all such brothers and sisters shall have died, then to their descendants:

In all cases, the inheritance shall descend in the same manner, as if all such brothers and sisters, had been the brothers and sisters of the intestate.

§ 11. If there be no brothers and sisters, or any of them, of the father of the intestate, and no descendants of such brothers and sisters, then the inheritance shall descend to the brothers and sisters of the mother of the intestate, and to the descendants of such of the said brothers and sisters as shall have died, or if all shall have died, then to their descendants, in the same manner, as if all such brothers and sisters had been the brothers and sisters of the father.

§ 12. In all cases not provided for by the preceding sections, where the inheritance shall have come to the intestate on the part of his mother, the same, instead of descending to the brothers and sisters of the intestate's father, and their descendants, as prescribed in the preceding tenth section, shall descend to the brothers and sisters of the intestate's mother, and to their descendants, as directed in the last preceding section; and if there be no such brothers and sisters, or descendants of them, then such inheritance shall descend to the brothers and sisters and their descendants, of the intestate's father, as before prescribed.

[1 R. L., 52, § 8, 3d rule.]

§ 13. In cases where the inheritance has not come to the intestate, on the part of either the father or mother, the inheritance shall descend to the brothers and sisters both of the father and mother of the intestate, in equal shares, and to their descendants, in the same manner as if all such brothers and sisters, had been the brothers and sisters of the intestate.

§ 14. In case of the death, without descendants, of an intestate who shall have been illegitimate, the inheritance shall descend to his mother; if she be dead, it shall descend to the relatives of the intestate on the part of the mother, as if the intestate had been legitimate.

§ 15. Relatives of the half blood shall inherit equally with those

Rule if such descendants are of unequal degrees. 10 Paige, 148; 4 Paige, 340. Brothers and sisters of father, and their descendants. 14 N. Y., 235; 10 Paige, 148; 4 Paige, 340; 5 Lans., 446.

[753] Brothers and sisters of mother and their descendants.

In what case brothers and sisters of mother, and their descendants, to be preferred to those of father.

When brothers and sisters of both father and mother, etc., to inherit equally. 52 N. Y., 67; 79 N. Y., 52.

Mother, etc., of illegitimate intestate. 23 Barb., 32; 24 Hun, 187.

Relatives

of the half blood.

14 N. Y., 235; 31 Barb., 658; 1 Paige, 562; 5 Sandf., 418; 52 N. Y., 67; 56 N. Y., 224; 16

of the whole blood in the same degree; and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood; unless the inheritance came to the intestate by descent, devise, or gift of some one of his ancestors; in which case, all those who are not of the blood of such ancestor, shall be excluded from such inheritance.

J. & S., 430.

Common law when to prevail.

§ 16. In all cases not provided for by the preceding rules, the inheritance shall descend according to the course of the common law.

[1 R. L., 52, § 3, 5th rule.]

Rule as to one heir.

6 Hill, 637.

Several heirs, how to hold.

§ 17. Whenever there shall be but one person entitled to inherit, according to the provisions of this chapter, he shall take and hold the inheritance solely; and whenever an inheritance, or a share of an inheritance, shall descend to several persons, under the provisions of this chapter, they shall take as tenants in common, in proportion to their respective rights.

[754]

Posthumous descendants and relatives.

2 Barb., 251; 4 Hun, 612.

§ 18. Descendants and relatives of the intestate, begotten before his death, but born thereafter, shall in all cases inherit in the same manner, as if they had been born in the life time of the intestate, and had survived him.

[1 R. L., 54, § 5.]

Illegitimate children and relatives.

18 Hun, 507;

§ 19. Children and relatives who are illegitimate, shall not be entitled to inherit, under any of the provisions of this chapter.

91 N. Y., 315.

Certain estates, etc., not to be affected.

28 Barb., 344; 15 How. Pr. R., 565; 19

§ 20. The estate of a husband as tenant by the curtesy, or of a widow as tenant in dower, shall not be affected by any of the provisions of this chapter; nor shall the same affect any limitation of any estate by deed or will.

Hun, 246; 21 Hun, 381; 22 Hun, 266; 13 Daly, 108; 24 W. D., 35.

[1 R. L., 54, § 4.]

Estates in trust.

§ 21. Real estate held in trust for any other person, if not devised by the person for whose use it is held, shall descend to his heirs, according to the provisions of this chapter.

1 R. L., 74, § 4.]

Alienism of ancestor.

13 N. Y., 535; 5 N. Y., 274; 3 Barb. Ch.,

§ 22. No person capable of inheriting under the provisions of this chapter, shall be precluded from such inheritance, by reason of the alienism of any ancestor of such person.

446; 21 Wend., 130; 3 Sandf., 79; 7 Wend., 336; 1 Sheld., 128; 57 How. Pr., 229; 80 N. Y., 171.

When advancement to be set off.

3 Sandf. Ch., 127; 4 Abb., 3; 13 Barb., 252; 3 Bradf.,

§ 23. If any child of an intestate shall have been advanced by him, by settlement or portion of real or personal estate, or of both of them, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal estate of such intestate, descendible to his heirs, and to be distributed to his next of kin, ac-

ording to law; and if such advancement be equal or superior, to the amount of the share, which such child would be entitled to receive, of the real and personal estate of the deceased, as above reckoned, then such child and his descendants shall be excluded from any share, in the real and personal estate of the intestate.

18 Hun, 217; 11 Hun, 523; 4 Hun, 69; 10 Hun, 611; 68 N. Y., 106; 3 Redf., 28; 79 N. Y., 246; 4 57 Hun, 218; 104 N. Y., 74; 42 Hun, 278.

[R. L., 313, § 16.]

§ 24. But if such advancement be not equal to such share, such child and his descendants shall be entitled to receive so much only, of the personal estate, and to inherit so much only, of the real estate of the intestate, as shall be sufficient to make all the shares of the children, in such real and personal estate and advancement, to be equal as near as can be estimated.

When to be deducted.
8 Sandf. Ch. 127;
14 Hun, 735;
58 Barb., 810; 61 id., 298; 64 Barb., 404.

[The same.]

§ 25. The value of any real or personal estate so advanced shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise such value shall be estimated, according to the worth of the property when given.

Value of advancement.
8 Sandf. Ch., 127;
64 Barb., 404; 61 Barb., 298; 18 Hun, 819.

§ 26. The maintaining or educating, or the giving of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement.

Expenses, &c., not advancements.
10 Barb., 72; 61 Barb., 298.

§ 27. The term "real estate," as used in this chapter, shall be construed to include every estate, interest and right, legal and equitable, in lands, tenements and hereditaments, except such as are determined or extinguished by the death of an intestate, seised or possessed thereof, or in any manner entitled thereto, and except leases for years, and estates for the life of another person; and the term "inheritance," as used in this chapter, shall be understood to mean real estate, as herein defined, descended according to the provisions of this chapter.

Terms "real estate" and "inheritance" defined.
[755]
53 N. Y., 199; 52 N. Y., 67; 51 Barb., 643; 4 Bradf., 7; 88 N. Y., 560.

§ 28. Whenever, in the preceding sections, any person is described as living, it shall be understood that he was living at the time of the death of the intestate, from whom the descent came; and whenever any person is described as having died, it shall be understood, that he died before such intestate.

Construction of certain expressions.

§ 29. The expressions used in this chapter, "where the estate shall have come to the intestate, on the part of the father," or "mother," as the case may be, shall be construed to include every case where the inheritance shall have come to the intestate, by devise, gift, or descent from the parent referred to, or from any relative of the blood of such parent.

Meaning of certain other expressions.

L. 1855, Chap. 547 — An act allowing illegitimate children to inherit real and personal property in certain cases.

Illegitimates may inherit from their mother. SECTION 1. Illegitimate children in default of lawful issue, may inherit real and personal property from their mother as if legitimate ; but nothing in this act shall affect any right or title in or to any real or personal property already vested in the lawful heirs of any person heretofore deceased.

3 Bradf., 249.

CHAPTER III.

OF THE PROOF AND RECORDING OF CONVEYANCES OF REAL ESTATE, AND THE CANCELLING OF MORTGAGES.

- SMO.**
1. Conveyances of real estate, where to be recorded ; consequence of omission.
 2. Deeds and mortgages to be recorded in different sets of books.
 3. Defeasances, etc., of deeds to be recorded with them.
 4. Officers in this state and the United States, authorised to take proofs, etc., of deeds.
 5. Ambassadors, consuls, etc., in Europe, etc., may take proofs, etc.
 6. In Great Britain, etc., consuls, etc., may take proof, etc.
 7. Proofs, etc., how certified by mayors, consuls and ambassadors ; effect thereof.
 8. Proofs, etc., before special commissioners appointed by chancery.
 9. Identity of persons acknowledging deed, to be known or proved.
 10. Married women in this state, to be examined, etc.
 11. Proof, etc., of conveyances by married women residing out of this state.
 12. Proof of deeds by subscribing witnesses, how made.
 13. When and how witnesses to deeds, compelled to testify concerning them.
 14. Penalty and proceedings on refusal, etc., to appear or to testify.
 15. Certificate of proof, etc., to be indorsed on deed ; its contents.
 - 16 & 17. [Repealed.]
 18. Certificates of certain judges and commissioners, when and how to be authenticated.
 19. Last section not to apply to deeds of agents of certain estates.
 20. Certificates to be recorded with conveyance ; effect of omission.
 21. Conveyances by treasurer of Connecticut, how verified.
 22. This chapter not to affect conveyances heretofore proved, etc.
 23. Conveyances heretofore executed, but not proved, how to be proved, etc.
 24. Conveyances to be recorded in order of delivery, and deemed then recorded.
 25. Entry of time of recording, etc., to be made and endorsed on deed.
 26. Transcripts of records how to be verified, in order to be evidence.
 27. [Repealed.]
 28. Upon what proof records, etc., of mortgages, to be discharged.
 29. Certificate of discharge and proof, etc., to be recorded in the minutes of discharge, reference to be made to the page where certificate is recorded.
 30. When witnesses to conveyance dead, before whom it may be proved.
 31. What proof to be made ; matters to be stated in certificate.
 32. Deed so proved, on being deposited, may be recorded.
 33. Effect of recording and deposit, as notice, as evidence.
 34. Punishment for recording deeds, etc., without being proved, etc.
 35. Punishment of judges, etc., for malfeasance in executing powers herein given.
 36. Definition of term : " real estate," as used in this chapter.
 37. Construction of the term " purchaser."
 38. Meaning of term " conveyance."
 39. Last section not to extend to powers of attorney, but they and contracts for land may be proved, etc., and recorded ; effect thereof.
 40. Letter of attorney recorded not affected by revocation until it be recorded.
 41. Recording assignment of mortgage not to be notice to mortgagor, etc.
 42. This chapter not to extend to leases for life or years, in certain counties.
 43. What provisions of this chapter apply to register in New York.

SECTION 1. Every conveyance of real estate, within this state, hereafter made, shall be recorded in the office of the clerk of the county where such real estate shall be situated ; and every such conveyance not so recorded shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the

Convey-
ances to be
recorded in
county
clerk's
office.

same real estate, or any portion thereof, whose conveyance shall be first duly recorded.

3 N. Y., 520; 8 N. Y., 27, 450; 29 Barb., 507; 25 Barb., 399; 23 Barb., 65; 20 Barb., 392; 18 Barb., 202; 16 Barb., 264; 6 Barb., 67, 349, 346; 15 Wend., 588; 8 Wend., 680; 6 Wend., 218; 3 Wend., 180; 2 Barb. Ch., 158; 6 Hill, 473; 2 Hill, 650; 8 Paige, 547; 4 Paige, 215; 3 Paige, 437; 1 Sandf. Ch., 425; 1 Edw., 653; 2 Johns. Ch. R., 604; 2 Johns. R., 509; 28 N. Y., 218; 43 Barb., 423; 35 Barb., 334; 1 Hun, 296; 52 N. Y., 138; 1 Abb. Ct. App. Dec., 295; 4 id., 701; 4 Hun, 300, 705; 63 Barb., 16; 7 Lans., 3; 37 How. Pr. R., 280; 45 How. Pr. R., 297; 6 T. & C., 357, 566; 8 Bosw., 174, 523; 69 N. Y., 1; 76 N. Y., 463; 13 J. & S., 404; 7 Abb. N. C., 188; 19 Hun, 209; 19 Hun, 183; 79 N. Y., 23; id., 373; 21 J. & S., 175; 12 Abb. N. C., 402; 23 Hun, 508; 29 Hun, 62, 379; 30 Hun, 411; 35 Hun, 566; 39 Hun, 229, 335, 609; 86 N. Y., 221; 87 N. Y., 267, 446; 89 N. Y., 592, 641; 90 N. Y., 346; 97 N. Y., 416; 95 N. Y., 43.

[1 R. L., 369, 372; L. 1819, 269; L. 1821, 127; L. 1822, 261, 284; L. 1823, 412.]

Different books for deeds and mortgages. 28 N. Y., 214; 6 N. Y., 147; 5 Bosw., 382; 42 N. Y., 543; 13 J. & S., 404; 69 N. Y., 623.

Certain deeds to be deemed mortgages.

Defeasances, &c., to be recorded.

16 Barb., 430; 5 Barb., 362; 8 Wend., 208; 2 Cow., 824; 5 Paige, 111; 1 Paige, 553;

§ 2. Different sets of books shall be provided by the clerks of the several counties, for the recording of deeds and mortgages; in one of which sets, all conveyances absolute in their terms, and not intended as mortgages, or as securities, in the nature of mortgages, shall be recorded; and in the other set, such mortgages and securities shall be recorded.

§ 3. Every deed conveying real estate, which by any other instrument in writing, shall appear to have been intended, only, as a security in the nature of a mortgage, though it be an absolute conveyance in terms, shall be considered as a mortgage; and the person for whose benefit such deed shall be made, shall not derive any advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being designed to have the effect only of a mortgage, or conditional deed, be also recorded therewith, and at the same time.

Cl. Ch., 167; 6 Johns. Ch. R., 417; 42 N. Y., 343; 6 Lans., 286; 5 Bosw., 383; 18 Hun, 208.

[1 R. L., 372, § 8; L. 1822, 262, § 8.]

Officers who may take proofs, &c., of deeds.

In this state.

§ 4. To entitle any conveyance hereafter made, to be recorded by any county clerk, it shall be acknowledged by the party or parties executing the same, or shall be proved by a subscribing witness thereto, before any one of the following officers:

1. If acknowledged or proved within this state; the chancellor, justices of the supreme court, circuit judges, supreme court commissioners, judges of county courts, mayors and recorders of cities, or commissioners of deeds; but no county judge, or commissioner of deeds for a county or city, shall take any such proof or acknowledgment, out of the city or county, for which he was appointed:

(757) In any other part of United States. 6 N. Y., 422; 5 N. Y., 36; 8 Barb., 562; 5 Hill, 574; 6 Paige, 60; 11 Johns. R., 435; 4 Johns. R., 162; 81 N. Y., 474.

2. If acknowledged or proved out of this state, and within the United States; the chief justice and associate justices of the supreme court of the United States, district judges of the United States, the judges or justices of the supreme, superior or circuit court, of any state or territory, within the United States, and the chief judge, or any associate judge, of the circuit court of the United States, in the District of Columbia; but no proof or acknowledgment, taken by any such officer, shall entitle a conveyance to be recorded, unless taken within some place or territory, to which the jurisdiction of the court to which he belongs, shall extend.

[1 R. L., 369, § 1.]

Ambassadors, consuls, &c., in Europe, &c. 84 Hun, 208.

§ 5. If the party or parties executing such conveyance, shall be, or reside, in any state or kingdom in Europe, or in North, or South America, the same may be acknowledged or proved before any minister plenipotentiary, or any minister extraordinary, or any *chargé*

des affaires, of the United States, resident and accredited within such state or kingdom. If such parties be or reside in France, such conveyance may be acknowledged or proved before the consul of the United States, appointed to reside at Paris; and if such parties be or reside in Russia, such conveyance may be acknowledged or proved before the consul of the United States appointed to reside at St. Petersburg.

[1816, 118.]

§ 6. If the party to such conveyance be, or reside within the United Kingdom of Great Britain and Ireland or the dominions thereunto belonging, the same may be acknowledged or proved before the mayor or provost or chief magistrate of any city or town in said kingdom or dominions, or before any consul of the United States appointed to reside at any place in said kingdom or dominions. [Thus amended by L. 1883, ch. 80.]

[1 R. L., 870, § 3; L. 1817, 58.]

§ 7. Such proof or acknowledgment, duly certified under the hand, and seal of office, of such consuls, or of the said mayors or chief magistrates respectively, or of such minister or *chargé des affaires*, shall have the like force and validity, as if the same were taken, before a justice of the supreme court of this state.

[L. 1816, 118; 1 R. L., 370; L. 1817, 58.]

§ 8. Every such conveyance, heretofore made, or hereafter to be made, may be acknowledged or proved, without the United States, before any person specially authorized for that particular purpose, by a commission under the seal of the court of chancery of this state, to be issued to any reputable person residing in, or going to, the country where such proof or acknowledgment is to be taken; and the acknowledgment or proof so taken, shall be of the like force and validity, as if the same were taken before a justice of the supreme court of this state.

[L. 1817, 58, §§ 1 and 2.]

§ 9. No acknowledgment of any conveyance having been executed, shall be taken by any officer, unless the officer taking the same, shall know, or have satisfactory evidence, that the person making such acknowledgment, is the individual described in, and who executed such conveyance.

541; 4 Wend., 563; 2 Cow., 552; 11 Johns. R., 434; 6 Johns. R., 149; 1 Johns. R., 498; 2 58 N. Y., 627; 7 Lans., 6; 19 Hun, 62; id., 577; 10 Daly, 151; 14 Abb. N. C., 451.

[1 R. L., 369, §§ 1 and 2.]

§ 10. The acknowledgment of a married woman residing within this state, to a conveyance purporting to be executed by her, shall not be taken, unless in addition to the requisites contained in the preceding section, she acknowledge, on a private examination, apart from her husband, that she executed such conveyance, freely, and without any fear or compulsion of her husband; nor shall any estate of any such married woman, pass, by any conveyance not so acknowledged.

[Abrogated by L. 1879, ch. 249, post.]

Paige, 346, 3 Paige, 121; 8 Cow., 233; 20 Johns. R., 201; 16 Johns. R., 110; 7 Johns. R. 86; 4 Edw., 73; 12 How. Pr. R., 441; 63 Barb., 71; 4 Bosw., 93; 4 J. & S., 297; 7 Lans., 6; 38 Hun, 404.

Mayors, consuls, &c., in Great Britain; 30 Hun, 57; 34 Hun, 203.

Proofs, &c., how certified in foreign countries.

Proofs, &c., taken by special commission from chancery.

[788] Requisites for acknowledgments. 25 Wend., 274; 19 Wend., 443; 13 Wend., T. & C., 87; N. C., 451.

Id., when made by married women in this state 4 N. Y., 15; 20 Barb., 571; 17 Barb., 660; 15 Barb., 837; 13 Barb., 54; 5 Barb., 227; 2 Barb. Ch., 268; 10

Married
women
residing
out of this
state.
2 Bosw.,
424.

§ 11. When any married woman, not residing in this state, shall join with her husband, in any conveyance of any real estate, situated within this state, the conveyance shall have the same effect as if she were sole; and the acknowledgment or proof of the execution of such conveyance by her, may be the same as if she were sole.

[1 R. L., 369, §§ 1 and 2.]

Proof by
subscrib-
ing wit-
ness.
1 Wend.,
406; 1
Hopk., 267;
2 Cow., 552;
4 Edw., 73;
36 N. Y.,
435; 2 T. &
C., 87; 36
N. Y., 435;
20 Barb.,
555; 24

§ 12. The proof of the execution of any conveyance, shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in, and who executed such conveyance; and such proof shall not be taken, unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such instrument.

371; 13 Barb., 54; 8 Barb., 563; 13 Wend., 541; 1 Johns. R., 496; 7 Wend., 306; 2 Wend., 371; 13 Barb., 54; 8 Barb., 563; 13 Wend., 541; 90 N. Y., 618, 629.

[1 R. L., 369, §§ 1 and 2.]

When and
how wit-
nesses to
deeds,
compelled
to testify
concerning
them.
36 N. Y.,
435.

§ 13. Upon the application of any grantee, in any conveyance, his heirs or personal representatives, or of any person claiming under them, verified by the oath of the applicant, that any witness to the conveyance, residing in the county where such application is made, refuses to appear and testify, touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorised to take the acknowledgment or proof of conveyances, except a commissioner of deeds, may issue a subpoena requiring such witness to appear and testify before such officer touching the execution of such conveyance.

Penalty,
etc., for
refusal to
appear to
testify.

§ 14. Every person, who being served with such subpoena, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath, touching the matters aforesaid, shall forfeit to the party injured, one hundred dollars; and may also be committed to prison by the officer who issued such subpoena, there to remain without bail, and without the liberties of the jail, until he shall submit to answer upon oath as aforesaid.

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Certificate
of proof,
etc., to be
endorsed
on deed;
its con-
tents.

§ 15. Every officer who shall take the acknowledgment or proof of any conveyance, shall endorse a certificate thereof, signed by himself, on the conveyance; and in such certificate shall set forth the matters herein before required to be done, known or proved, on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

20 Barb.,
271; 13
Barb., 54;
8 Barb.,
563; 24
435; 2 T. &

Wend., 92; 13 Wend., 541; 1 Wend., 406; Hopk., 267; 2 Cow., 552; 4 Edw., 73; 36 N. Y., C., 87; 10 Daly, 151; 14 Abb. N. C., 450; 90 N. Y., 618.

[1 R. L., 369, §§ 1 and 2.]

[Sections 16 and 17 repealed by L. 1877, ch. 417.]

Certificates
of certain
judges and
of commis-
sioners of
deeds, to be
authenticat-
ed in cer-
tain cases
by county
clerk.
6 N. Y., 423;
1 N. Y., 77;
23 Barb.,

§ 18. Where any conveyance shall be proved or acknowledged, before any judge of the county courts, not of the degree of counsellor at law, in the supreme court, or before any commissioner of deeds appointed for any county or city, it shall not be entitled to be read in evidence, or to be recorded, in any other county than that in which such judge or commissioner shall reside, unless in addition to the preceding requisites, there shall be subjoined to the certificate of proof or acknowledgment, signed by such judge or commissioner

a certificate under the hand and official seal of the clerk of the county, in which such judge or commissioner resides, specifying that such judge or commissioner was, at the time of taking such proof or acknowledgment, duly authorized to take the same, and that the said clerk is well acquainted with the handwriting of such judge or commissioner, and verily believes, that the signature to the said certificate of proof or acknowledgment, is genuine.

[L. 1818, 44, §§ 5 and 8.]

§ 19. The last section shall not apply to any conveyance executed by any agent for the Holland Land Company, or by any agent of the Pulteney estate, lawfully authorized to convey real estate.

§ 20. The certificate of the proof or acknowledgment of every conveyance, and the certificate of the genuineness of the signature of any judge or commissioner, in the cases where such last mentioned certificate is required, shall be recorded, together with the conveyance, so proved or acknowledged; and unless the said certificates be so recorded, neither the record of such conveyance, nor the transcript thereof, shall be read, or received in evidence.

[L. 1818, 44, § 5.]

§ 21. All conveyances of real estate, executed since the tenth day of March, one thousand eight hundred and twenty-five, or hereafter to be executed, by the treasurer of the state of Connecticut, which shall be acknowledged by him before the secretary of state of the state of Connecticut, and the acknowledgment of which, shall be certified by the said secretary, under the seal of the said state, in the manner herein prescribed, may be recorded in the proper offices within this state, without further proof thereof; and every such conveyance, or the record thereof, or the transcript of such record, duly certified, may be read in evidence, as if such conveyance had been acknowledged before a justice of the supreme court.

[L. 1825, 85.]

§ 22. Every conveyance of any real estate within this state, heretofore executed, and heretofore acknowledged or proved and certified, in such manner as to be entitled to be read in evidence, or recorded, under the laws now in force, but which has not been so recorded, shall be entitled to be read in evidence, in all courts, and to be recorded in the proper office, in the same manner, and with the like effect, as if this chapter had not been passed.

§ 23. Every such conveyance, not already proved or acknowledged, may be proved or acknowledged, in the same manner as conveyances hereafter executed, and when so proved, acknowledged or recorded, shall have the like effect.

§ 24. Every conveyance entitled by law to be recorded, shall be recorded in the order, and as of the time, when the same shall be delivered to the clerk for that purpose, and shall be considered as recorded, from the time of such delivery.

[1 R. L., § 70 § 5.]

§ 25. The recording officer shall make an entry in the record, immediately after the copy of every conveyance recorded, specifying

555, 556; 8
Wend., 180;
14 Abb. N.
C., 450; 88
Hun., 24, 38.

Last sec-
tion quali-
fied.
4 Barb., 618.

Certificates
to be re-
corded
with con-
veyance.

(760)
Effect of
omission.
10 Daly,
151; 14 Abb.
N. C., 450.

Convey-
ances by
treasurer
of Connecti-
cut.

This chap-
ter not to
affect con-
veyances
heretofore
proved, &c.
§ Duer, 78.

Existing
conveyan-
ces not
proved.
§ Duer, 78.

Order of
recording,
&c.
8 Cow., 261;
25 Hun., 578.

Time of re-
cording to
be entered

and endorsed on deed.

the time of the day, month and year, when the said conveyance was recorded, and shall endorse upon every conveyance recorded by him, a certificate, stating the time as aforesaid, when, and the book and page where, the same was recorded.

[1 R. L., 370, § 5.]

Transcripts of records, how to be verified.

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§ 26. To entitle the transcript of any record of such conveyance, recorded as aforesaid, and of the certificates of the acknowledgment or proof thereof and of the genuineness of any signature to such certificate, to be read in evidence, the same shall be certified to be a true copy of such record, by the clerk of the county in whose custody the same shall be, under the seal of the court of common pleas of the county of which he is clerk, or by the register of the city and county of New York, when such record shall be in his custody.

[1 R. L., 370, § 5.]

[Section 27 repealed by L. 1877, ch. 417.]

Discharge of record, etc., of mortgages. 23 N. Y., 231; 6 T. & C., 357; 33 Hun, 617; 30 Hun, 238; 43 Hun, 463; 82 N. Y., 82; 87 N. Y., 446.

§ 28. Any mortgage that has been registered or recorded, or that may hereafter be recorded, shall be discharged upon the record thereof, by the officer in whose custody it shall be, whenever there shall be presented to him, a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified, as herein before prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied and discharged.

[1 R. L., 373, § 4.]

Certificate of discharge, &c., to be recorded. Reference in minute of discharge.

§ 29. Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length: and a reference shall be made to the book and page, containing such record, in the minute of the discharge of such mortgage, made by the officer upon the record thereof.

[The same.]

Proof of deed when witnesses are dead.

§ 30. Where the witnesses to any conveyance, authorised by this chapter to be recorded, shall be dead, then the same may be proved before any officer authorised to take the proof and acknowledgment of deeds, other than commissioners of deeds, and county judges not of the degree of counsel in the supreme court.

What proof to be made, how certified.

§ 31. The proof of the execution of any conveyance in such case, shall be made by satisfactory evidence of the death of all the witnesses thereto, and of the hand-writing of such witnesses, or any one of them, and of the grantor; all which evidence, with the names and places of residence of the witnesses examined before him, shall be set forth by the officer taking the same, in his certificate of such proof.

When deed to be re-recorded.

§ 32. Any conveyance proved and certified, pursuant to the two last sections, may be recorded in the proper office, if the original deed be at the same time deposited in the same office, there to remain, for the inspection of all persons desiring to examine the same.

§ 33. The recording and deposit of any conveyance, proved and certified according to the provisions of the three last sections, shall be constructive notice of the execution of such conveyance, to all purchasers subsequent to such recording; but such proof, recording, or deposit, shall not entitle such conveyance, or the record thereof, or the transcript of such record, to be read in evidence.

Effect of recording and deposit.
[763]
20 Barb., 404; 8 Bosw., 188; 63 N. Y., 189.

§ 34. No clerk of any city or county, shall record any conveyance, by which any interest in real estate is, or may be in any way affected, unless the same shall have been duly acknowledged or proved, and such acknowledgment or proof duly certified according to law; and any such officer, offending herein, shall be adjudged guilty of a misdemeanor, and on conviction, shall be subject to fine and imprisonment.

Punishment for recording deeds, &c., without being proved, &c.

[1 R. L., 371, § 8.]

§ 35. Every judge, officer, or other person, within this state, authorised to take the acknowledgment or proof of any conveyance, and every clerk of any county, or his deputy, who shall be guilty of any malfeasance, or fraudulent practice in the execution of the duties prescribed to them by law, in relation to the taking, or certifying, the proof or acknowledgment, or the recording, or certifying, any record of any such conveyance, mortgage, or instrument in writing, or in relation to the cancelling of any mortgage, shall, upon conviction, be adjudged guilty of a misdemeanor, and be subject to punishment by fine and imprisonment, and shall also be liable in damages to the party injured.

Punishment of judges, clerks, &c., for malfeasance.

[L. 1823, 15.]

§ 36. The term "real estate," as used in this chapter, shall be construed as co-extensive in meaning with "lands, tenements and hereditaments," and as embracing all chattels real, except leases for a term not exceeding three years.

Term "real estate" defined.
13 N. Y., 152; 35 Barb., 334; 35 Hun, 180; 39

§ 37. The term "purchaser," as used in this chapter, shall be construed to embrace every person to whom any estate or interest in real estate, shall be conveyed for a valuable consideration, and also every assignee of a mortgage, or lease, or other conditional estate.

357; 28 Hun, 509; 39 Hun, 235; 87 N. Y., 446; 83 N. Y., 215; 86 N. Y., 230.

§ 38. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, by which any estate, or interest in real estate is created, aliened, mortgaged or assigned; or by which the title to any real estate, may be affected in law or equity; except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands.

Term "conveyance."
6 T. & C., 367, 556; 28 N. Y., 213; 63 Barb., 36, 71; 50 id., 366; 48 id., 110; 4 Bosw., 297; 8 id., 524; 301; 19 Hun, 32 N. Y., 33.

25 Barb., 334; 1 Wend., 485; 35 Barb., 334; 4 Hun, 300, 705; 48 N. Y., 644; 59 N. Y., 156; 76 N. Y., 463; 29 Hun, 339; 39 Hun, 235; 83 N. Y., 215; 82 N. Y., 33.

§ 39. The preceding section shall not be construed to extend to a letter of attorney, or other instrument containing a power to convey lands as agent or attorney for the owner of such lands; but every such letter or instrument, and every executory contract for the sale

Last section not to include powers of attorney; but they and con.

tracts for land, may be proved and re-recorded.

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Effect of re-
cord, &c. 10
Paige, 846;
4 Bosw. 297;
8 Bosw.,
194; 104 N.
Y., 157.

Letters re-
corded,
how re-
voked.

or purchase of lands, when proved or acknowledged, in the manner prescribed in this chapter, may be recorded in the clerk's office of any county, in which any real estate, to which such power or contract relates, may be situated; and when so proved or acknowledged, and the record thereof when recorded, or the transcript of such record, may be read in evidence, in the same manner, and with the like effect, as a conveyance recorded in such county.

§ 40. No letter or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation, be also recorded in the same office, in which the instrument containing the power was recorded.

Record of assignment of mortgage, not notice, &c. 3 Barb. Ch., 84; 11 Paige, 37; 10 Paige, 33 Hun, 232.

§ 41. The recording of an assignment of a mortgage shall not be deemed, in itself, notice of such assignment to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

413; 2 Cow., 298; 35 Barb., 334; 47 N. Y., 307; 10 Bosw., 233; 1 T. & C., 433; 23 Hun, 46; id., 1; 79 N. Y., 23; 23 W. D., 331; 37 Hun, 412; 83 N. Y., 32; 43 Hun, 136; 106 N. Y., 556.

Certain leases in counties named not affected.

§ 42. The provisions of this chapter shall not extend to leases for life or lives, or for years, in the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware and Schenectady.

[L. 1823, 413, § 5.]

Register in New York. 4 Abb. Pr., 23; 62 N. Y., 86; 34 Hun, 527.

§ 43. All the provisions of this chapter, excepting the eighteenth section, conferring any powers, or imposing any duties, obligations or penalty upon a county clerk, shall extend and apply to the register of the city and county of New York, in the same manner as if he were county clerk of the said county.

L. 1829, Chap. 222 — An act concerning the proof and acknowledgment of deeds.

Acknowledgments before mayors, consuls and judges of foreign places. SECTION 1. Every acknowledgment or proof of a deed or mortgage made or taken before the mayor of either of the cities of Philadelphia or Baltimore, or before any consul of the United States resident in any foreign port or country, or before a judge of the highest court in Upper Canada or Lower Canada, and certified by them respectively, shall be as valid and effectual as if taken before one of the justices of the supreme court of this state.

5 Hill, 574; 34 Hun, 192.

L. 1839, Chap. 295 — An act to provide for the preservation of the title papers of the Holland Land Company, and for other purposes.

[Sections 1-4 are omitted as local.]

Copies of records may be recorded by county clerk. § 5. A copy of any deed, conveyance or other instrument in writing relating to, or in any manner affecting the title to any real estate, which is or may be recorded or filed in the office of the

secretary of state, upon being certified by the said secretary in the manner required by law, to entitle the same to be read in evidence, may be recorded in the office of the clerk of any county in this state, or in the office of the register of deeds in the city of New York with the secretary's certificate; and such record and a duly certified copy thereof, may be read in evidence in the same manner and with the like effect, as the record of a conveyance of real estate situate in such county, originally recorded in the said clerk's office or in the office of the said register.

L. 1843, Chap. 199—An act requiring county clerks to make and keep books of general indices.

Indices to be made to deeds and mortgages. SECTION 1. The clerks of the several counties in this state, and the register of the city and county of New York, in those counties in which general indices of deeds and mortgages have not been made and preserved, according to the act passed April 18, 1826, shall provide proper books for making such general indices, and shall form indices therein in such manner as to afford correct and easy reference to the several books of record in their offices respectively. There shall be one book for deeds and another for mortgages. In each book there shall be made double entries, or two lists of names in alphabetical order. In one shall be set the names of the grantors or mortgagors, followed by the names of their grantees or mortgagees; and in the other the names of the grantees or mortgagees, followed by the names of the grantors or mortgagors, leaving proper blanks between each class of names for subsequent entries; and in those counties in which indices were made under the said act of April 18, 1826, and have been preserved, the several clerks shall complete the same by bringing them down to the present time, and in either case, the said clerks shall keep the said indices complete by adding to the lists, as deeds and mortgages shall be sent in to be recorded.

30 Hun, 174; 87 N. Y., 257.

Expenses to be paid. § 2. Each county clerk is hereby authorized to charge in his account against his county, all necessary expenses which he may incur in the purchase of books for such indices, and at and after the rate of fifty cents for every hundred names which he may enter in such book.

Exception. § 3. The provisions of this act shall not apply to such counties in this state as now have a general numerical index of deeds and mortgages in the office of the clerk of said counties.

L. 1843, Chap. 210—An act to authorize the recording of certain documents therein mentioned.

[Sections 1-4 are omitted as local.]

Copies may be recorded in certain cases. § 5. The copy of any record, or of any recorded deed or instrument, attested and authenticated in such manner as would by law entitle it to be read in evidence, may be again recorded in any office wherein the original would be entitled to be recorded, and such record shall have the same effect as if the original were so recorded. [*Thus amended by L. 1887, ch. 539.*]

L. 1845, Chap. 109—An act in relation to the acknowledgment and proof of deeds and mortgages.

Mayors of cities may take acknowledgments. SECTION 1. Every acknowledgment or proof of a deed or mortgage, made or taken before the mayor of any city, in the

United States, and certified by him, shall be as valid and effectual, as if taken before one of the justices of the supreme court of this state.

5 Park. Cr. R., 101.

L. 1845, Chap. 110—An act in relation to the recording or patents for lands in certain cases.

Patents may be recorded in counties. SECTION 1. All letters patent issued under the great seal of this state, granting land to any person or persons, in addition to the record thereof made in the office of the secretary of state, may be recorded in the county where the lands granted are situated, in the same manner and with the like effect as any deed regularly acknowledged or proved before an officer authorized by law to take the proof and acknowledgment of deeds, whenever the patentee or owner of such lands shall request the same to be so recorded.

L. 1847, Chap. 170—An act authorizing the acknowledgment of conveyances in certain cases to be taken in Mexico before certain officers of the army of the United States.

Deeds, how to be acknowledged by the army in Mexico. SECTION 1. The acknowledgment of any deed, mortgage or other conveyance of any real estate within this state, and of any contract in relation to such real estate, and of any power of attorney authorizing the conveying, mortgaging or otherwise disposing of such real estate, or of making any contract in relation thereto which has been or shall be executed by an officer or soldier of the army of the United States, employed at the time of making such acknowledgment within the territory of the republic of Mexico, may be taken within such territory before, and certified by any major-general, brigadier-general or colonel of the said army, to whom the person making such acknowledgment shall be personally known at the time of making the same. The certificate of any acknowledgment taken and certified by virtue of this act, shall state the place at which it is taken, and the fact that the person making the same is an officer or soldier of the said army, of which facts such acknowledgment shall be presumptive evidence. Every acknowledgment so taken and certified shall have the same force and effect in all respects as if the same were taken and certified within this state by an officer authorized by law to take and certify the same.

L. 1848, Chap. 195—An act to provide for taking the acknowledgments of deeds and other written instruments, by persons residing out of the state of New York.

Proof or acknowledgment, how to be made in other states. SECTION 1. The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged, in order to entitle the same to be recorded or read in evidence, when made by any person residing out of this state, and within any other state or territory of the United States, may be made before any officer of such state or territory, authorized by the laws thereof to take the proof and acknowledgment of deeds; and when so taken and certified as herein provided, shall be entitled to be recorded in any county in this state, and may be read in evidence in any court in this state, in the same manner and with like effect, as proofs and acknowledgments taken before any of the officers now authorized by law to take such proofs and acknowledgments: Provided that no such acknowledgment shall be valid unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in and who executed the said deed or instrument.

What is necessary to entitle deed, etc., to be read in evidence. § 2. To entitle any conveyance or written instrument, acknowledged or proved under the preceding section, to be read in evidence or recorded in this state, there shall be subjoined or attached to the certificate of proof or acknowledgment, signed by such officer, a certificate, under the name and official seal of the clerk, register, recorder or a prothonotary of the county in which such officer resides, or the clerk of any court thereof, having a seal, specifying that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take the same, and that such clerk, register, recorder or prothonotary is well acquainted with the handwriting of such officer, and verily believes that the signature to said certificate of proof or acknowledgment is genuine. [*Thus amended by L. 1867, ch. 557.*]

L. 1850, Chap. 270 — An act to authorize the appointment of commissioners, to take the proof and acknowledgment of deeds and other instruments, and to administer oaths in other states and territories.

Governor to appoint commissioners; number; term of office; authority. SECTION 1. The governor of this state is hereby authorized to name, appoint and commission so many commissioners in each of the other states and territories of the United States, and in the District of Columbia, as he may deem expedient, provided that the number of commissioners shall at no time exceed ten in any one city or county; the said commissioners shall continue in office for four years, and shall have authority to take the acknowledgment and proof of the execution of any deed, mortgage, lease or other conveyance of any lands, tenements or hereditaments, lying or being in this state, or of any contract, assignment, transfer, letter of attorney, satisfaction of a judgment or of a mortgage, or of any other writing or instrument under seal, to be used or recorded in this state; also to administer an oath or affirmation to any person or persons who may desire to make such oath or affirmation. [*Thus amended by L. 1876, ch. 58.*]

Their powers. § 2. Any acknowledgment or proof taken in pursuance of the powers, and under the directions and limitations conferred by and mentioned in this act, in manner directed by the laws of this state, with respect to the acknowledgment or proof of deeds, taken by any officer authorized to take such acknowledgment, residing within this state, and certified by any one of said commissioners, whose appointment is authorized by this act, before whom the same shall be taken or made under his hand and official seal; which certificate shall be endorsed on said deed or other instrument mentioned in the first section of this act, shall, when authenticated in the manner hereinafter provided, be entitled to be recorded in any county in this state, and shall have the same force and effect, and be as good and available in law, for all purposes, as if the same had been taken or made before any officer authorized to take such proof or acknowledgment, residing in this state; and any affidavit or affirmation made before any such commissioner, certified and authenticated as aforesaid, may be read in evidence, and shall be as good and effectual to all intents and purposes, as if taken and certified by an officer authorized to administer oaths, residing in this state.

Commissioner to take and subscribe oath; official seal. § 3. Every commissioner appointed by virtue of this act shall, before he performs any duty under and by virtue of his said appointment and of this law, take and subscribe an oath or affirmation before a justice of the peace, or some other magistrate in the city or county in which he shall reside, well and faithfully to execute and perform all the duties of such commissioner under and by virtue of the laws of the state of New York; which oath or affirmation shall be filed in the office of the secretary of this state. And every such commissioner shall, also before he enters upon the duties of his office, cause to be prepared an official seal, in which shall be designated his name, and the words "a commissioner of deeds for the state of New York," together with the name of the state or territory, and also of the city and county in which he shall reside, and for which he shall have been appointed, and shall transmit to and

cause to be filed in the office of the secretary of the state, a distinct impression of such seal, taken upon wax or some other substance capable of receiving and retaining a clear impression, together with his signature in his own proper writing. [*Thus amended by L. 1876, ch. 58.*]

Papers acknowledged before commissioners, to be recorded. § 4. When any deed or other instrument shall be proved or acknowledged, or any oath or affirmation shall be taken before any commissioner appointed by virtue of this act, before it shall be entitled to be used, recorded or read in evidence, in addition to the preceding requisites, there shall be subjoined or affixed to the certificate, signed and sealed by such commissioner as aforesaid, a certificate under the hand and official seal of the secretary of state of this state, certifying that such commissioner was at the time of taking such proof or acknowledgment, or of administering such oath or affirmation duly authorized to take the same, and that the secretary is acquainted with the handwriting of such commissioner, or has compared the signature to such certificate with the signature of such commissioner deposited in his office, and has also compared the impression of the seal affixed to such certificate, with the impression of the seal of such commissioner deposited in his office, and that he verily believes the signature and the impression of the seal of the said certificate to be genuine.

Commissioners authorized to act as such only within city or county where they shall reside when appointed. § 5. No commissioner appointed under or by virtue of this act shall be authorized to take the proof or acknowledgment of any deed or instrument, or to administer any oath or affirmation at any place other than within the city and county within which he shall reside at the time of his appointment, and every certificate of any such commissioner to any proof or acknowledgment taken before him, or to any oath or affirmation administered by him, shall specify the day on which and the town and county or the city within which the same was taken or administered; and without such specification the said certificate shall be wholly invalid, inoperative and void. [*Thus amended by L. 1880, ch. 115.*]

Fees of secretary of state. § 6. The secretary of state shall be entitled to demand and receive the sum of twenty-five cents for every certificate by him given in pursuance of the fourth section of this act. [*Thus amended by L. 1857, ch. 788.*]

[Section 7 repeals L. 1840, ch. 290, and makes other temporary provision.]

Instructions to be prepared. § 8. It shall be the duty of the secretary of state of this state, to prepare instructions and a set of forms in conformity with the laws of this state, and to forward the same, together with a copy of this act, to every person who shall be appointed a commissioner under and by virtue of this law.

Eligibility. § 9. No person shall be appointed a commissioner under this act, who is not at the time of his appointment, a resident of the city or county, and state or territory for which he may be appointed.

[This act was repealed by L. 1875, ch. 136, § 11, *post*, so far as it authorized the appointment, by the governor, of commissioners to take the proof and acknowledgment of deeds and other instruments, and to administer oaths in the Dominion of Canada.]

L. 1858, Chap. 259—An act in relation to the proof or acknowledgment of deeds and other conveyances by persons residing out of this state.

Deeds, etc., how to be acknowledged. SECTION 1. Any deed or conveyance or other written instrument, affecting real estate within this state, proved or acknowledged in any other state or territory of the United States, according to the laws of such state or territory, where the grantor or grantors of such deed or conveyance and the officer before whom the same shall be proved or acknowledged shall be dead; and when such proof or acknowledgment shall be certified as herein provided,

may be recorded in any county of the state, and may be read in evidence in any court of this state, in the same manner and with the like effect as though the same had been proved or acknowledged as required by the laws of this state, provided that the death of the grantor or grantors, and of the officer before whom the same shall be proved or acknowledged, shall be proved by the affidavit of one or more persons, sworn to before some officer authorized by law to administer oaths in such state or territory, and certified as herein provided.

Certificate to be annexed, etc. § 2. To entitle such deed or conveyance, or other written instrument, to be read in evidence or recorded in this state, there shall be annexed to the certificate of proof or acknowledgment, signed by such officer, a certificate under the name and official seal of the clerk or register of the county in which such officer resided, specifying that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take the same, and that such clerk or register is well acquainted with the handwriting of such officer, and verily believes that the signature to said certificate of proof or acknowledgment is genuine, and that such deed or conveyance or written instrument, is proved or acknowledged in all respects, as required by the laws of such state or territory. There shall also be a like certificate of such clerk or register, attached to the jurat or affidavit, proving the death of the grantor or grantors, and of the officer before whom the deed or written instrument was proved or acknowledged, certifying that such officer was, at the time of taking such affidavit or affidavits, duly authorized to take the same, and that such clerk or register is well acquainted with the handwriting of such officer, and verily believes that the signature to such jurat or affidavit is genuine. Such affidavit or affidavits shall be recorded with such deed or other written instrument, and be presumptive evidence of the facts therein stated.

L. 1862, Chap. 365—An act to authorize the discharge of mortgages of record in certain cases.

Discharge, how obtained by petition, etc.; proviso as to mortgages assigned where assignment is not acknowledged. SECTION 1. The mortgagor, his heirs, or any person having any interest in any lands described in any mortgage of real estate in this state, which is recorded in this state, and which from the lapse of time, is presumed to be paid, or in any moneys into which said lands have been converted under a decree of a court of competent jurisdiction, and which are held in place of such lands to answer such mortgage, may present his petition to the courts mentioned in this act, asking that such mortgage may be discharged of record. Such petition shall be verified; it shall describe the mortgage, and when and where recorded, and shall allege that such mortgage is paid; that the mortgagee has, or, if there be more than one mortgagee, that all of them have, been dead for more than five years; or, if such mortgagee be a corporation or association, that such corporation or association has ceased to exist and do business as such for more than five years; the time and place of his or their death, and place of residence at the time of his or their death; whether or not letters testamentary or of administration have been taken out, or, if said mortgagee or mortgagees at the time of his or their death resided out of this state, whether or not letters testamentary or of administration have been taken out in the county where such mortgaged premises are situated; or, if a corporation or association, its last place of business; the names and places of residence, as far forth as the same can be ascertained, of the heirs of such mortgagee or mortgagees; or, if such mortgagee be a corporation or association, then the names of one or more of the receivers, if any were appointed, or of the person who has the care of the closing up of the business of such corporation or association; and that such mortgage has not been assigned or transferred, and if such mortgage has been assigned, state to whom, and the facts in regard to the same. Provided, however, that if such mortgage has been duly assigned by indorsement thereon, or otherwise, but not acknowledged so as to entitle the same to be recorded, then it shall be competent for

the court, at any time within the period aforesaid, upon proof that all the matters hereinbefore required to be stated in said petition are true, and that the assignee of such mortgage, if living, or his personal representative, if dead, has been paid the amount due thereon, to make an order that such mortgage be discharged of record. [*Thus amended by L. 1884, ch. 326.*]

Where presented. § 2. Such petition may be presented to the supreme court in the county where the mortgaged premises are situated, or to the county court of such county, or when situate in the city of New York to the superior court thereof, or when situate in the city of Buffalo to the superior court thereof. [*Thus amended by L. 1882, ch. 100.*]

Order to show cause; publication and service thereof. § 3. The court upon the presentation of such petition, shall make an order requiring all persons interested to show cause at a certain time and place, why such mortgage should not be discharged of record. The names of the mortgagor, mortgagee and assignee, if any, the date of the mortgage and where recorded and the town or city in which the mortgaged premises are situate shall be specified in the order. The order shall be published in such newspaper or newspapers, and for such time as the court shall direct. The court may also direct the order to be personally served upon such persons as it shall designate.

Commission to take testimony; order of court. § 4. The court may issue commissions to take the testimony of witnesses, and may refer it to a referee to take and report proofs of the facts stated in the petition. The certificate of the proper surrogate or surrogates, whether or not letters testamentary or of administration have been issued, shall be evidence of the fact; and the certificate of the clerk of the county or counties in which the mortgaged premises have been situate, since the date of said mortgage, shall be evidence of the assignment of such mortgage, or of a notice of the pendency of an action to foreclose such mortgage, and of such other matters as may be therein stated; or if a notice of the pendency of an action to foreclose such mortgage has been filed, then his certificate that such mortgage has never been foreclosed unless the allegation of payment shall be denied, and evidence be given, tending to rebut the presumption of payment, arising from lapse of time, such lapse of time shall be sufficient evidence of payment. Upon being satisfied that the matters alleged in the petition are true, the court may make an order that the mortgage be discharged of record. [*Thus amended by L. 1882, ch. 278.*]

Duty of county clerk. § 5. The county clerk upon being furnished with a certified copy of such order and paid the fees allowed by law for discharging mortgages, shall record said order and discharge the mortgage of record.

L. 1863, Chap. 246 — An act in relation to the acknowledgment of proof of the execution of instruments in writing by persons in foreign countries, and to the administering of oaths to them.

Foreign acknowledgments. SECTION 1. The acknowledgment or proof of any deed or other written instrument, required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence in this state, by any person being in any foreign country, may be made before any consul-general, vice-consul, deputy consul, consular agent, vice-consular agent, commercial agent, or vice-commercial agent of the United States government, resident in any foreign port or country, and when certified by him, under his seal of office or under the seal of the consulate or agency to which he is attached, to have been made before him by the party executing or being a subscribing witness to the same, and that the said party executing the same is known or proven to him to be the same person who is described in and who executed the same shall be as valid and effectual as if taken before one of the justices of the supreme court in this state. [*Thus amended by L. 1888, ch. 246, superseding L. 1865, ch. 421.*]

Former ones confirmed. § 2. All acts of vice-consuls, deputy consuls, consular agents, vice-consular agents, commercial agents, or vice-commercial agents of the United States government, in taking the acknowledgment or proof of deeds, mortgages or other instruments relating to real estate, hitherto performed, are hereby confirmed; provided that the certificate thereof is in the form required by the statutes of this state. [*Thus amended by L. 1865, ch. 421.*]

[Section 3 was repealed by L. 1877, ch. 417.]

L. 1863, Chap. 456—An act to provide for the recording of the stamps of the United States internal revenue, and for the certifying of the same when affixed to any instrument, and other purposes.

When revenue stamps to be recorded. SECTION 1. Whenever, to any instrument of writing, which may, by the provisions of law, be recorded in any public office, there shall have been affixed any stamp or stamps of the United States internal revenue, the officer whose duty it is to record such instrument of writing shall also record such stamp or stamps in connection with the record of such instrument.

When certified copy of stamp evidence. § 2. Whenever, to any record, document or other paper, a certified copy of which is declared by law to be evidence, there shall have been affixed a stamp or stamps of the United States internal revenue, a certified copy of such stamp or stamps is hereby declared to be evidence, if the copy of such stamp or stamps shall be certified by the clerk or officer in whose custody such record, document or other paper is by law required to be, to have been compared by him with the original, and to be a correct transcript from the written or printed part thereof, and of the whole of such written or printed part; and if such officer have an official seal by law, such certificate shall be attested by such seal.

When public officer may charge for stamp. § 3. Any public officer who shall be required by law to affix to any certificate or other instrument, in writing, made or issued by him, any stamp, shall be entitled to charge and collect the price thereof, in addition to any fees or other compensation which he is now by law entitled to charge or receive, to be paid by the person for whose benefit such certificate or other instrument, in writing, is made or issued by such officer.

L. 1867, Chap. 557 — An act to amend chapter one hundred and ninety-five, laws of 1848, entitled "An act to provide for taking the acknowledgments of deeds and other written instruments, by persons residing out of the state of New York," passed April 7th, 1848.

[Section 1 amends L. 1848, ch. 195, § 2.]

Application of act. § 2. This act shall apply to all conveyances or written instruments heretofore proved, or acknowledged and recorded, or to which a certificate has been subjoined or attached, as provided by this act, but shall not affect any litigation now pending.

L. 1870, Chap. 208 — An act in relation to the acknowledgment or proof of the execution of instruments in writing by persons in the dominion of Canada.

Acknowledgments may be taken before certain judges and mayors; certificate by clerk of court. SECTION 1. The acknowledgment or proof of any deed or other written instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence in this state, by any person being in the dominion of Canada, may be made (in addition to the persons already authorized

by law) before the judge of any court of record, or the mayor of any city, within the said dominion of Canada; but no such acknowledgment or proof shall be valid unless the officer taking the same knows or has satisfactory evidence that the person making it is the individual described in and who executed the instrument. And there must be subjoined or attached to the certificate of proof or acknowledgment, if taken before a judge of a court of record, a certificate under the name and official seal of the clerk of the court, that there is such a court; that the judge before whom the proof or acknowledgment is taken is a judge thereof; that such court has a seal; that he is the clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature genuine. If the proof or acknowledgment be taken before the mayor of any city, it shall be certified by him under his seal of office. And such proof or acknowledgment taken pursuant to the foregoing provisions shall be as valid and effectual as if taken before a justice of the supreme court of this state.

L. 1872, Chap. 692—An act to amend section three of chapter nineteen of laws of 1821, to perpetuate certain testimony respecting the title of the Poultney estate in this state.

Amendment. SECTION 1. Section three of chapter nineteen of laws of eighteen hundred and twenty-one, is hereby amended so as to read as follows:

When copies of the depositions to be received in evidence; not to affect existing suits. § 3. And be it further enacted, that copies of the depositions so as aforesaid taken and filed, when certified by the register of the court of chancery and having the seal of the court thereto affixed, shall and may at all times hereafter, and in all courts as well of law as of equity in this state, be received and read as prima facie evidence of the facts in the said depositions set forth in all suits which may be depending in the same courts and in which the title of the said Poultney estate may be the point in issue, or in which the title, by reason of any matter incidental to the point in issue, may be drawn into question, or between any and all persons claiming to hold lands within this state under conveyances from the Poultney estate. This act shall not affect any suit or proceeding now pending.

L. 1875, Chap. 136—An act to authorize the appointment of commissioners to take the proof and acknowledgment of deeds and other instruments, and to administer oaths in foreign states and countries, and for other purposes, and to repeal chapter three hundred and eight of the laws of 1858, and the acts amendatory thereof, together with so much of chapter two hundred and seventy of the laws of 1850, entitled "An act to authorize the appointment of commissioners to take the proof and acknowledgment of deeds and other instruments and to administer oaths in other states and territories," and the acts amendatory thereof, as authorizes the appointment by the governor of this state of commissioners to take the proof and acknowledgment of deeds and other instruments and to administer oaths in the Dominion of Canada.

Governor to appoint commissioners; powers; certificate of commissioner, effect of. SECTION 1. The governor is hereby authorized to appoint and commission one or more, and not exceeding five commissioners in each city in any foreign state or country, where, in his discretion such appointment may be necessary, who shall continue in office for four years, and who shall have authority to take the acknowledgment or proof of the execution of any deed or written instrument, to be recorded or read in evidence in this state, (except bills of exchange, promissory notes, and last wills and testaments), and also to administer an oath or affirmation to any person or persons who may desire to take the same and to certify to the taking of such oath or affirmation; and also to certify the existence of any patent, record or other document remaining of record in any public office

or official custody in such foreign state or country, and the correctness of a copy of any such patent, record or other document. The certificate of any one of such commissioners under his official seal and subscribed by him, in regard to the acknowledgment or proof of the executions of any such deed or written instrument, or the taking of such oath or affirmation, or the existence of such patent, record or document, or the correctness of any copy thereof when authenticated by the secretary of state as hereinafter mentioned, shall authorize the recording or reading in evidence of such deed or written instrument, oath or affidavit, copy of patent, record or document.

Certificate of secretary of state. § 2. Before any such deed or other instrument, oath or affidavit, patent, record or document, shall be entitled to be used, recorded or read in evidence, in addition to the preceding requisites, there shall be subjoined or affixed to the certificate signed and sealed by such commissioner, as aforesaid, a certificate, under the hand and official seal of the secretary of state, of this state, certifying that such commissioner was duly authorized to take such proof or acknowledgment, or to administer such oath or affirmation, or to certify the existence and correctness of a copy of such patent, record or document, at the time his certificate thereto bears date, and that the secretary is acquainted with the handwriting of such commissioner, or has compared the signature to such certificate with the signature of such commissioner deposited in his office, and has also compared the impression of the seal affixed to such certificate with the impression of the seal of such commissioner deposited in his office, and that he believes the signature and the impression of the seal of the said certificate to be genuine.

Oath of commissioner; seal. § 3. Every commissioner appointed by virtue of this act, before performing any duty or exercising any power in virtue of his appointment, shall take and subscribe an oath or affirmation before a person authorized to administer such oath or affirmation in such foreign state or country by the laws of this state, or before a judge or clerk of one of the courts of record of the foreign state or country in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner under and by virtue of the laws of the state of New York; and shall also cause to be prepared an official seal, on which shall be designated his name and the words "commissioner of deeds for the state of New York," with the name of the city and foreign state or country for which he shall be appointed, and shall cause a distinct impression of such seal, taken upon wax or some other substance capable of receiving and retaining a clear impression, together with his signature, in his own proper writing, and the oath or affirmation above in this section mentioned, duly certified by the person before whom it may have been taken, to be filed in the office of the secretary of this state.

Vacancies. § 4. As often as the term of office of any commissioner appointed by virtue of this act shall expire, or the office shall become vacant by the death, resignation, or removal from the city for which he was appointed of such commissioner, the governor shall have power to fill the office by new appointment, and the person so appointed shall, upon complying with the provisions of the third section of this act, hold his office by the tenure, and shall possess the powers specified in the first section of this act.

Pay for certificate of secretary of state. § 5. The secretary of state shall be entitled to demand and receive the sum of twenty-five cents for every certificate by him given in pursuance of the third section of this act.

Secretary of state to forward instructions. § 6. It shall be the duty of the secretary of state to forward instructions and forms, in accordance with the laws of this state, together with a copy of this act, to each person who shall be appointed a commissioner under and by virtue of this act.

Fees of commissioners. § 7. The fees of such commissioners for services under this act shall be as follows: In Great Britain and Ireland, for administering each oath and certifying the same, one shilling sterling; in France, one franc and

twenty-five centimes. In Great Britain and Ireland for taking each acknowledgment or proof of any deed or other written instrument to be recorded or read in evidence, and for certifying the existence or correctness of a copy of any patent, record, or other document, four shillings sterling; in France five francs, and in all other foreign states or countries, the same compensation as is allowed the commissioners in France.

Certified copies of foreign records. § 8. A copy of any patent, record, or other document, remaining of record in any public office of any foreign state or country, when certified according to the form in use in such foreign state or country, and also certified according to the first and second sections of this act, may be read in evidence in any of the courts of this state.

Presumption as to certificate. § 9. The certificate of any one of said commissioners, annexed to a paper purporting to be certified as in the last section provided, shall be presumptive evidence that it has been certified according to the form in use in such foreign state or country.

Existing commissioners. § 10. All the official acts of the commissioners heretofore appointed by the governor under chapter three hundred and eight of the laws of eighteen hundred and fifty-eight, entitled "An act to authorize the appointment of commissioners to take the proof and acknowledgment of deeds and other instruments, and to administer oaths in Great Britain and France," and the acts amendatory thereof, are hereby legalized, ratified and confirmed, notwithstanding any excess in the number of commissioners appointed in said countries under said acts beyond the number authorized by law; and the said commissioners so appointed, and now in office, shall continue to hold their respective offices during a term of four years from the date of their commissions, and no longer; but nothing herein contained shall be deemed or taken to affect the rights of any party to any suit or proceeding commenced prior to the passage of this act.

[Section 11 repeals L. 1858, ch. 308, and its amendatory acts, and so much of L. 1850, ch. 270, as related to the Dominion of Canada, and continues:]

and, hereafter, all appointments of such commissioners in foreign states and countries shall be made under and pursuant to this act; but nothing herein contained shall affect the rights of commissioners heretofore appointed pursuant to said chapter three hundred and eight, laws of eighteen hundred and fifty-eight, and the acts amendatory thereof, or under said chapter two hundred and seventy, laws of eighteen hundred and fifty, and the acts amendatory thereof; and such commissioners so appointed shall remain in office and continue to exercise the powers and perform the duties conferred upon them under said acts during the term of four years, from the date of their respective appointments, and no longer.

L. 1876, Chap. 58—An act further to amend chapter two hundred and seventy of the laws of eighteen hundred and fifty, entitled "An act to authorize the appointment of commissioners to take the proof and acknowledgment of deeds and other instruments, and to administer oaths in other states and territories."

[Sections 1-3 amend L. 1850, ch. 270.]

Fees. § 4. The fees of such commissioners shall in no case exceed four times the amount allowed by the laws of the state or territory in which such commissioner resides, for like services within such state or territory by an officer thereof, provided, however, that in no case shall such fees for taking the proof or acknowledgment of a deed or other instrument or the administering of an oath or affirmation, exceed the sum of one dollar.

L. 1879, Chap. 249—An act in relation to the acknowledgment by married women of deeds and other written instruments.

Acknowledgment may be made by married women same as if sole. **SECTION 1.** The acknowledgment by married women or the proof of the execution by married women of deeds or other written instruments may be made, taken and certified in the same manner as if they were sole; and all acts and parts of acts which require from them any other or different acknowledgments, proofs or certificates thereof are hereby repealed. [*Thus amended by L. 1880, ch. 300.*]

L. 1880, Chap. 530—An act to provide for the bringing of actions for relief in certain cases where agreements, contracts and instruments in writing have been recorded.

Action to have certain contracts declared void and expunged of record. **SECTION 1.** When any agreement, contract or instrument in writing, relating to real estate, other than those required by law to be recorded, shall have been recorded, or shall be hereafter recorded in the office of the clerk or register of any county in this state, any owner of such real estate, or of an undivided part thereof, or of any interest therein, who claims that agreement, contract or instrument in writing is invalid or void, or that the same cannot be enforced as against him, either in whole or in part, may bring and maintain, in any court of competent jurisdiction, an action for the purpose of having such agreement, contract or instrument in writing declared void, or invalid, or for the purpose of being relieved therefrom and to have the same cancelled or discharged of record, as to said real estate or his undivided part thereof or interest therein, either wholly or as to such portion of such agreement, contract or instrument in writing as may be void or invalid, or which cannot be enforced as against him.

L. 1883, Chap. 233—An act to provide for an additional number of commissioners to take the acknowledgment or proof of deeds and other written instruments in other states and territories and in foreign states and countries.

Additional commissioners to be appointed. **SECTION 1.** The governor is hereby authorized to appoint five commissioners to take the acknowledgment or proof of deeds and other written instruments in each city in any foreign state or country, and each city or county in the several states and territories, and in the District of Columbia, of the United States, in addition to the number now authorized by law to be appointed.

L. 1887, Chap. 718—An act to provide for the recording and indexing of conveyances and instruments relating to land in the city of New York, according to limited areas.

After Dec. 31, 1887, conveyances to be recorded and indexed under this act. **SECTION 1.** Every conveyance of real estate situate in the city and county of New York, duly executed and acknowledged after the thirty-first day of December, eighteen hundred and eighty-seven, shall be recorded and indexed in the office of the register of deeds in and for said city and county, pursuant to the provisions of this act, and every such conveyance not so recorded shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded.

Map showing blocks to be made, certified, etc.; how numbered; known as land register map. **§ 2.** There shall be prepared, under the direction of the mayor and register of said city a map of the whole city on which shall be shown all blocks of land

whose exterior boundaries are fixed and established by lawful streets, avenues, boulevards or roadways, or water fronts where blocks extend to water boundaries. The word "block," as used in this act, designates a plot or parcel of land, such as is commonly so designated in the city of New York, wholly embraced within the continuous lines of streets, or streets and water front taken together, where water forms one of the boundaries of a block. The blocks on said map shall be numbered consecutively, beginning with number one at some block in the lower part of the city near the battery, and proceeding northward in the numbering with such regular order as may be found convenient, so that each block shall bear a separate number. A duplicate of such map shall also be prepared under the direction of said register and when such map is completed, the same and the duplicate thereof shall be certified by the mayor, under his hand and the seal of said city of New York, and shall be designated and known as the land register map of the city and county of New York. One of said maps shall be deposited and kept in the office of the register of the city and county of New York, and the other shall be deposited and kept in the office of the clerk of said city and county; and such maps shall thereupon be, and the same are hereby declared to be, public records.

Blocks not to be changed; additional blocks, and maps thereof. § 3. No change shall be hereafter made in the area or numbers of any of the blocks as laid down on said map; but the mayor and register of the said city for the time being may hereafter, from time to time, as public convenience may require, cause other maps of a like form and character to be made, certified and filed as provided in section two of this act, of lands not embraced in the map provided for in that section, whenever, in his judgment, a sufficient additional area of land shall have been legally laid out into blocks by the public authorities. But the blocks on such subsequent map shall be numbered consecutively from the highest number upon the last preceding map. All such new maps shall be deemed public records.

Duplicate record books to be made for each block; how marked, numbered, etc. § 4. The said mayor and register shall cause to be furnished for the register of said county duplicate sets of books of suitable size and character. One of such sets of books shall be devoted to the recording of conveyances, the other to the recording of mortgages and other liens in each block. Each volume shall be marked and numbered in a conspicuous manner on the back thereof, showing the purpose to which it is devoted, and giving also a block number corresponding with a block number on the map aforesaid. Each book shall also be marked on the first page on the inside in like manner, and shall also contain a diagram of the block, as shown on said map, corresponding with the same block number. And thereafter each book shall be used only for recording conveyances or mortgages or other liens within the area of the block the number of which corresponds with the number of that book. Each book shall be provided with a nominal index, substantially as such indexes are now kept, and the same shall be bound up with and form a part of the book to which such index relates.

How conveyances to be executed for recording; effect of failure to so execute; nominal index. § 5. In order to entitle any instrument, duly executed and acknowledged after December thirty-first, eighteen hundred and eighty-seven, affecting real estate or chattels real in the city and county of New York to be recorded (except as in the sixth, seventh, eighth and ninth sections of this act provided), there shall be plainly written in the body of the instrument the block number or block numbers, as the case may be, where the land is situated; and if the said instrument shall be otherwise executed as now required by law for the recording of instruments, the register shall record the same in the book or books of conveyances or mortgages, or other liens, as the case may be, corresponding with the block number or numbers stated in the instruments offered for record. When so recorded the same shall be deemed to be a recorded instrument for all purposes, as now provided by law for recording of conveyances in the register's office in the city and county of New York, as to all lands affected by such instrument

embraced within the block or blocks named in the instrument; and as to all other lands in the city and county of New York, it shall have only the effect of an unrecorded deed. The names of the parties to said instrument shall also be entered in the nominal index of the volume where it is recorded, and the register, in addition to the certificate of records now required to be made by him, shall in the same certificate certify that such instrument has been indexed in the book of records of the block in which it has been recorded as required by this act.

Recording instruments heretofore executed. § 6. Any instrument entitled to be recorded under the provisions of law before this act was passed, but not recorded, and which was duly executed, and acknowledged before January first, eighteen hundred and eighty-eight, may be recorded in the book of records for the block or blocks where the land is situated, provided any party in interest entitled to have the same recorded shall, by a designation in writing, duly acknowledged and indorsed thereon, state the number of the block or blocks in which he desires such instrument to be recorded; or the register may, in his discretion, if the description of the land in such instrument shows where it is located, record such instrument under the proper block number without such designation. Such instrument, as to land to which it relates not situated in the block or blocks where it is recorded, as in this section provided, shall have only the effect of an unrecorded deed.

Id., where land not within block limits. § 7. All instruments by way of conveyance, mortgage or other lien upon land, or that affect land, in the city of New York, not within the block limits provided for in this act, which are now by law entitled to be recorded, shall be received by said register and recorded in a book or books of record, the same, and with the same legal effect, as if this act had not been passed; and a general index or indices shall be kept of all such instruments, as now required by law.

Id., instruments not herein provided for. § 8. All instruments of a general character not hereinbefore provided for which are now entitled by law to be recorded in said register's office, shall be recorded the same as if this act had not been passed.

Id., discharges of mortgages. § 9. Satisfaction pieces and discharges of mortgages and other liens recorded in said register's office shall be received for record and recorded as now provided by law; except that in cases where the lien has been recorded under the block number, pursuant to this act, the recording of such discharges shall be made in the same book in which the lien is recorded or in a book of a corresponding number, and such discharges shall also be noted in the corresponding block index opposite the entry which refers to the record of the lien so satisfied.

Expenditures required to execute this act. § 10. For the purpose of procuring and preparing the maps, indices and books directed by this act to be procured and prepared, and putting the same in use, and otherwise carrying out the directions and intent of this act, said mayor and register in the name and on behalf of said city, may hire rooms, purchase stationery and material, and employ surveyors, draughtsman and such other expert persons, assistants and clerks as he may in his judgment require or think proper for such purpose, and may agree with the persons so employed for their compensation; and the compensation of such surveyors, draughtsmen and other persons so employed, and the cost of such material and work of putting said system of indices and books in use and operation in the offices where they are to be used, as provided by this act, and the other expenses authorized and to be incurred under this act, shall be provided for and paid in the manner directed by the next section of this act.

The same. § 11. The board of estimate and apportionment of the city of New York is hereby authorized and directed, from time to time, to determine the amounts of money which may be required to carry out the provisions of this act, and to appropriate said moneys therefor, which said amounts, so from time to time

appropriated, shall be included in the final estimate made by said board for the next succeeding annual tax levy, and shall be certified by the comptroller of the city of New York as a part of the said estimate; and the said comptroller is authorized and directed to pay out of the amounts so determined and appropriated, the expenses authorized by this act. And said comptroller is authorized to raise such money, from time to time, by the issue of revenue bonds of said city, which bonds shall be paid out of said moneys to be appropriated and raised as aforesaid.

Extension of time for new system to operate. § 12. If it shall be determined by said mayor and register that this act cannot go into operation at the time herein designated therefor, or at such further time designated by the said mayor, not exceeding six months from the time herein designated therefor, by reason of the non-completion of said map or indices, or for any other reason therefor, the said mayor, by notice published in the City Record in said city of New York for thirty days prior to the expiration of said time designated herein, or extended time designated by said mayor, may further extend the time for the act going into operation, and for all books, maps and indices to be completed, to a date not later than the first day of July, eighteen hundred and eighty-nine; and this act upon such publication shall thereupon go into operation in said office at the time so designated by said mayor. [*Thus amended by L. 1888, ch. 321.*]

Repeal; existing rights not affected. § 13. All acts and parts of acts inconsistent with this act are hereby repealed; but all existing acts, so far as this act is not inconsistent therewith, shall be deemed to remain in force. Nothing in this section provided shall affect any rights heretofore given or secured before this act shall go into operation.

When and how act takes effect. § 14. This act shall take effect immediately, and it shall go into operation as to recording and indexing, and the legal effect thereof, subject to the provisions of the twelfth section hereof, on the first day of January, in the year one thousand eight hundred and eighty-eight.

CHAPTER IV.

OF TITLE TO PERSONAL PROPERTY, IN CERTAIN CASES.

TITLE I.—OF LIMITED PARTNERSHIPS.

[Supplementary Title.

TITLE 1^A.—Partnership and other business names.]

TITLE II.—OF PROMISSORY NOTES, AND BILLS OF EXCHANGE.

[Supplementary Titles.

TITLE 2^A.—Of miscellaneous instruments for the payment of money.TITLE 2^B.—Of chattel mortgages, including liens on canal boats.]

TITLE III.—OF THE INTEREST OF MONEY.

TITLE IV.—OF ACCUMULATIONS OF PERSONAL PROPERTY, AND OF EXPECTANT ESTATES IN SUCH PROPERTY.

[Supplementary Title.

TITLE 4^A.—Other provisions relating to personal property.]

TITLE I.

Of Limited Partnerships.

- Sec. 1. For what purposes limited partnerships may be formed.
 2. To consist of general and special partners ; their respective liabilities.
 3. General partners only, to transact business.
 4. Certificate to be signed by all the partners ; its contents.
 5. Certificates before whom, and how to be acknowledged.
 6. In what counties to be filed and recorded.
 7. Affidavit also to be filed ; its contents.
 8. Partnership when deemed formed ; effect of false certificates, etc.
 9. Terms of partnership how to be published ; effect of omission.
 10. Affidavits of publication, where to be filed ; effect as evidence.
 11. Renewals, etc., of partnership, how to be made.
 12. Alterations, deemed dissolution of partnership.
 13. In what firm and names, business to be carried on.
 14. Suits to be in names of general partners.
 15. Special partner not to withdraw his capital ; may receive interest, etc.
 16. When to refund interest received by him.
 17. Rights of special partners ; restrictions upon them.
 18. Liability of general partners to account.
 19. [Repealed.]
 20. Assignments, etc., in certain cases, to give preference to creditors, void.
 21. Certain assignments, etc., of general partners, void.
 22. Certain acts of special partner to render him liable.
 23. Special partners not to claim as creditors on insolvency of firm.
 24. Dissolution by acts of partners, how made and published.

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SECTION I. Limited partnerships for the transaction of any mercantile, mechanical or manufacturing business, or of any other law- Purposes of limited

TITLE 1.

partner-
ships.
47 How. Pr.
R., 394; 4
Lans., 38;
11 How. Pr.
R., 392; 7
Paige, 585;
97 N. Y.,
183, 320.

ful trade or business, within this state, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this title shall not be construed to authorize any such partnerships for the purpose of banking or making insurance. [*Thus amended by L. 1866, ch. 70.*]

[The different sections of this title, except the tenth, and where otherwise noted, are taken, with variations, from the act of 1822, p. 259.]

Liabilities
of general
and special
partners.
15 Abb. N.
C., 334, note;
21 J. & S.,
486; 97 N.
Y., 320.

§ 2. Such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute, in actual cash payments, a specific sum as capital, to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the fund, so contributed by him or them to the capital.

Business,
by whom to
be trans-
acted.
3 Sandf.,
298; 1
Boew., 430.
Certificate
to be
signed by
all the part-
ners; its
contents.
10 Paige,
282; 5 Hill,
309; 62 N.
Y., 513; 69
N. Y., 148;
73 N. Y.,
590; 21 J. &
S., 28; 17
Abb. N. C.,
128, 136, 142;
13 Daly,
544; 22 J. &
S., 188.

§ 3. The general partners only shall be authorised to transact business for the partnership, except as provided in section seventeen, and no special partner shall be authorised to sign for the partnership, or to bind the same. [*Thus amended by L. 1857, ch. 414.*]

§ 4. The persons desirous of forming such partnership, shall make and severally sign a certificate, which shall contain,

1. The name or firm under which such partnership is to be conducted:

2. The general nature of the business intended to be transacted:

3. The names of all the general and special partners interested therein, distinguishing which are general and which are special, partners, and their respective places of residence;

4. The amount of capital which each special partner shall have contributed to the common stock:

5. The period, at which the partnership is to commence, and the period, at which it will terminate.

To be
acknowl-
edged.

§ 5. The certificate shall be acknowledged by the several persons signing the same, before the chancellor, a justice of the supreme court, a circuit judge, or a judge of the county courts; and such acknowledgment shall be made and certified in the same manner as the acknowledgment of conveyances of land.

[See L. 1837, ch. 129, *post*, p. 2496.]

When to be
filed and
recorded.
43 N. Y., 72;
20 J. & S.,
287.

[765]

§ 6. The certificate so acknowledged and certified, shall be filed in the office of the clerk of the county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large, in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, a transcript of the certificate, and of the acknowledgment thereof, duly certified by the clerk in whose office it shall be filed, under his official seal, shall be filed and recorded in like manner, in the office of the clerk of every such county.

Affidavit to
be filed.
5 Hill, 313;
2 Abb. Pr.,
293; 24 How.
Pr. R., 485;
15 Abb. Pr.

§ 7. At the time of filing the original certificate, with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums, specified in the certificate, to have been con-

tributed by each of the special partners to the common stock, have been actually and in good faith paid in cash.

§ 8. No such partnership shall be deemed to have been formed, until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed, as above directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership, shall be liable for all the engagements thereof, as general partners.

5 Hill, 315; 30 Barb., 287; 24 How. Pr. R., 459; 15 Abb. Pr., 461; 62 N. Y., 512; 30 J. & S., 23, 84; 17 Abb. N. C., 128; 100 N. Y., 535; 13 Daly, 544.

§ 9. The partners shall publish the terms of the partnership, when requested,* for at least six weeks immediately after such registry, in two newspapers, to be designated by the clerk of the county in which such registry shall be made, and to be published in the senate district or city, or town, in which their business shall be carried on; and if such publication be not made, the partnership shall be deemed general. [*Thus amended by L. 1862, ch. 476.*]

287; 21 J. & S., 84; 15 Abb. N. C., 321; 97

§ 10. Affidavits of the publication of such notice, by the printers of the newspapers, in which the same shall be published, may be filed with the clerk directing the same, and shall be evidence of the facts therein contained.

§ 11. Every renewal or continuance of such partnership, beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given, in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued, shall be deemed a general partnership.

§ 12. Every alteration which shall be made in the names of the general partners, in the nature of the business, or in the capital or shares thereof contributed, held or owned, or to be contributed, held or owned, by any of the special partners, and the death of any partner, whether general or special, shall be deemed a dissolution of the partnership, unless the articles of partnership shall specify that in such events the partnership shall be continued by the survivors, in which case it may be so continued with the assent of the heirs or legal representatives of the deceased partner. And every such partnership which shall be carried on after such alteration shall have been made, or such death shall have occurred, shall be deemed a general partnership in respect to all business transacted after such alteration or death, except in the case of a provision in the articles of partnership for the continuance of the business by the survivors as aforesaid, in which case the heirs or legal representatives of the deceased partner may succeed to the partnership rights of such deceased partner, and continue the business the same as if such partner had remained alive; provided, however, that one or more special partner or partners may be added to the partnership upon actually paying in an additional amount of capital, to be agreed upon by the general and special partners, and the alteration of the partnership by such additional special partners shall not make the partnership general, nor alter its name, nor work a dissolution, provided the general partners in the

TITLE I.

461; 5
Daly, 46.
When
partner-
ship
deemed
formed.
Conse-
quence of
false cer-
tificate, &c.
6 Hill, 481;
S., 294; 21
Daly, 544.

Terms of
partner-
ship to be
published.

Effect of
omission.
6 Hill, 481;
3 Denio,
426; 24
Wend., 498;
30 Barb.,
N. Y., 330.

Proof of
publica-
tion.

Renewals,
&c., of
partner-
ship.
17 Abb. N.
C., 128.

Dissolved
by altera-
tions.
11 N. Y.,
97, 100; 4
Robt., 426;
20 N. Y.,
181.

When
deemed
general
partner-
ship.

* So in the original.

TITLE I.

partnership name shall file an additional certificate with the clerk, with whom the original certificate may have been filed, verified on oath by one of them, stating the names and residences of such additional special partners, and the amounts respectively contributed to the common stock by them. And any special partner, or the heirs or legal representatives of any such special partner, deceased, may sell his interest in the partnership without working a dissolution thereof, or rendering the partnership general, provided a notice of such sale be filed within ten days thereafter, with the clerk with whom such original certificate of partnership may have been filed, and the purchaser of such interest may thereupon become a special partner, with the same rights as an original special partner. [*Thus amended by L. 1858, ch. 289.*]

Names
composing
firm.
5 Hill, 309;
39 Barb.,
287.

[706]

§ 13. The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, except that where there are two or more general partners the firm name may consist of either one or more of such general partners with or without the addition of the words "and company," or "& Co.," and if the name of any special partner shall be used in such firm, with his privity, he shall be deemed a general partner; but the said partnership shall be put upon some conspicuous place on the outside and in front of the building in which it has its chief place of business, some sign on which shall be painted in legible English characters, all the names in full of all the members of said partnership, and in default thereof no action shall be abated or dismissed by reason of the proof of plaintiff of the partnership failing to meet the allegations of his pleading as to the names and number of the partnership; but the pleading may be amended on the trial to conform to the proof in that respect without costs. [*Thus amended by L. 1866, ch. 661, § 2.*]

[*L. 1866, ch. 661, § 2. This act shall apply to existing limited partnerships, but shall not discharge any special partner from any liability now existing upon any debt or obligation heretofore contracted.*]

Suits, in
whose
names.
4 E. D. S.,
308; 4
Robt., 431.
Capital of
special
partner not
to be with-
drawn.
When he
may re-
ceive in-
terest.
24 How. Pr.
R., 459; 15
W. D., 289;
15 Abb. N.
C., 320; 28
Hun, 219.

§ 14. Suits in relation to the business of the partnership, may be brought and conducted, by and against the general partners, in the same manner as if there were no special partners.

§ 15. No part of the sum which any special partner shall have contributed to the capital stock, shall be withdrawn by him, or paid or transferred to him, in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided may also receive his portion of such profits.

[*L. 1827, 249; L. 1822, 259, § 11.*]

When to
refund in-
terest.
5 Hill, 313.

§ 16. If it shall appear, that by the payment of interest or profits to any special partner, the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital, with interest.

[*The same.*]

§ 17. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management; he may also loan money to, and advance and pay money for the partnership, and may take and hold the notes, drafts, acceptances and bonds of or belonging to the partnership, as security for the repayment of such moneys and interest, and may use or lend his name and credit as security for the partnership, in any business thereof, and shall have the same rights and remedies in these respects as any other creditor might have. He may also negotiate sales, purchases, and other business for the partnership, but no business so negotiated shall be binding upon the partnership, until approved by a general partner. Excepting as herein mentioned, he shall not transact any business on account of the partnership, nor be employed for that purpose, as agent, attorney or otherwise. If he shall interfere contrary to these provisions he shall be deemed a general partner. [*Thus amended by L. 1857, ch. 414.*]

TITLE 1.
Rights of special partners.
5 Hill, 313;
4 Abb. Pr., 113; 35 N. Y., 329; 18 Abb. Pr., 461; 24 Barb., 280; 4 Robt., 431; 97 N. Y., 144.

Restrictions.

General partners to account.

§ 18. The general partners shall be liable to account to each other, and to the special partners, for their management of the concern, both in law and equity, as other partners now are, by law.

[Section 19 repealed by L. 1886, ch. 593.]

§ 20. Every sale, assignment, or transfer of any of the property or effects of such partnership, made by such partnership when insolvent, or in contemplation of insolvency, or after, or in contemplation of, the insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner, over other creditors of such partnership; and every judgment confessed, lien created, or security given, by such partnership, under the like circumstances, and with the like intent, shall be void, as against the creditors of such partnership.

Certain transfers void.
Certain judgments and securities void.
9 Abb. Pr., 132; 16 Abb., 71; 25 N. Y., 491; 38 Barb., 282; 4 Robt., 425; 56 How. Pr. R., 365; 108 N. Y., 633.

§ 21. Every such sale, assignment or transfer of any of the property or effects of a general or special partner, made by such general or special partner, when insolvent, or in contemplation of insolvency, or after or in contemplation of the insolvency of the partnership with the intent of giving to any creditor of his own, or of the partnership, a preference over creditors of the partnership; and every judgment confessed, lien created, or security given, by any such partner, under the like circumstances, and with the like intent, shall be void, as against the creditors of the partnership.

97 N. Y., 263; 108

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Certain transfers, &c., of their property by general partners void.
6 Paige, 581; 38 Barb., 282; 16 Abb. Pr., 71; 25 N. Y., 491; 28 Hun, 69; 39 Hun, 102; N. Y., 683.

§ 22. Every special partner, who shall violate any provision of the two last preceding sections, or who shall concur in, or assent to, any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

When special partner to become liable.
39 Barb., 287; 19 W. D., 77.

§ 23. In case of the insolvency or bankruptcy of the partnership, no special partner shall, except for claims contracted pursuant to section seventeen, under any circumstances, be allowed to claim as a creditor, until the claims of all the other creditors of the partnership shall be satisfied. [*Thus amended by L. 1857, ch. 414.*]

Y., 328; 28 How. Pr. R., 103; 3 Sandf., 394; 97

When not to claim as creditor.
20 N. Y., 180; 6 Paige, 582; 24 Barb., 290; 35 N. Y., 143.

TITLE 1. § 24. No dissolution of such partnership by the acts of the parties, shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the clerk's office in which the original certificate was recorded, and published once in each week for four weeks, in a newspaper printed in each of the counties where the partnership may have places of business, and in the state paper.

L. 1837, Chap. 129 — An act to amend title first, chapter four, part second of the Revised Statutes, concerning limited partnerships.

Certificate, how to be acknowledged. SECTION 1. The certificate required by the fourth section of title first of chapter four of part second of the Revised Statutes of the state of New York, may be acknowledged or proved, as to the several persons signing the same, before the same persons before whom a conveyance of lands may be now or hereafter acknowledged or proved; and such acknowledgment or proof, shall be made and certified in the same manner as the acknowledgment or proof of the conveyances of lands may be made or certified; and the certificate when so made, shall have the same effect as if it were acknowledged in the manner heretofore required by the law hereby amended.

L. 1872, Chap. 114 — An act in relation to limited partnerships.

Special partners may lease to general partners lands, etc. SECTION 1. It shall be lawful for a special partner in any limited partnership to lease to the general partner or partners any lands, tenements or other property for the purposes of the partnership, at such rents and upon such terms as may be agreed upon between them.

[Supplementary Title.]

TITLE 1^A.

Partnership and other Business Names.

L. 1849, Chap. 347 — An act in relation to copartnership styles.

Act of 1833 modified. SECTION 1. The act entitled "An act to prevent persons from transacting business under fictitious names," passed April 29, 1833,* shall not apply to commercial copartnerships located and transacting business in foreign countries, but they may use their styles or firms of their houses in this state.

84 Hun, 192.

L. 1854, Chap. 400 — An act allowing the continued use of copartnership names in certain cases.

Name, when to be continued. SECTION 1. When any copartnership shall have used or hereafter shall use any copartnership name, and the business conducted

* The statute referred to was repealed by L. 1836, ch. 503.

by it shall be continued by some or any of the copartners, their assigns or appointees, it shall be lawful to continue the use of such name, provided that on every change of the persons continuing such use a certificate shall be filed and notice published as is hereinafter expressed.

16 J. & S., 559; 11 Daly, 293; 93 N. Y., 259.

Certificate to be acknowledged and published. § 2. On every change of the person or persons continuing the use of such name, he or they shall sign and acknowledge, before any officer by law authorized to take acknowledgment of deeds, a certificate declaring the person or persons dealing under such name, with their place or places of abode, and file the same with the clerk of the county in which shall be his or their principal place of business, and shall cause the same to be published in a newspaper printed in the town or city in which shall be such principal place of business, or if none be printed in such town, then in a newspaper printed in the county town, and in the newspaper printed by the printer to this state, for four successive weeks.

Register of firms. § 3. The county clerk shall keep a register of such firms and names, entering in alphabetical order the name of every firm and of the copartner or copartners thereof, for which registering and filing he shall receive for each firm a fee of one dollar, and an additional fee of ten cents for every name of a copartner beyond two; and the copies of such certificate and registry certified by him, and the affidavit of such publication, shall be evidence.

To what partnerships act applicable. § 4. The provisions of this act shall apply to firms or copartnerships having business relations with foreign countries, and to all copartnerships in this state who have transacted business therein for a period of three years or upwards, and to any limited partnership formed under the laws thereof whose general partners or the majority of them shall have been members of the prior copartnership, and who shall elect to continue their business under the name of such prior copartnership and comply with the requirements of this act. [*Thus amended by L. 1888, ch. 142, superseding L. 1863, ch. 144.*]

Repeal. § 5. All statutes to the contrary of this act are hereby repealed, as to persons within the purview hereof.

L. 1868, Chap. 256—An act in relation to partnerships and the use by new partnerships of the names of former partnerships.

Limited partnership may use name of former firm where majority of old firm are members of new one. SECTION 1. Any limited partnership which may hereafter be formed under the laws of this state may use the firm name of any former general or limited partnership formed under said laws, where a majority of the partners, general or special, in either of such last-mentioned copartnerships, or of the survivors thereof, shall be members of the new limited copartnership; or where a majority of the members of such former copartnership, or of the surviving members thereof, shall consent in writing to the use of such firm name by such new copartnership, upon complying with the provisions of the act entitled "An act allowing the continued use of copartnership names in certain cases," passed April seventeenth, eighteen hundred and fifty-four, and the act amendatory thereof, so far as the same may be applicable. [*Thus amended by L. 1881, ch. 425.*]

L. 1880, Chap. 561—An act to allow the continued use of a business name or designation in certain cases.

Right to continue use of business name in cases named to be part of personal estate of deceased. SECTION 1. In case any resident of this state shall die, who, at the time

of his death, and for a period of five years or more immediately prior thereto, was conducting and carrying on, in his sole name, any business in this state, or who, at the time of his death, was so conducting and carrying on any business having relation with other states or foreign countries, the right to use the name of said deceased, for the purpose of continuing and carrying on such business, shall survive, and in all cases where the right hereby given is exercised, such right to the use of such name shall form a part of the personal estate of such deceased, and shall pass or be disposed of and accounted for as such, and the right hereby given may be exercised under the provisions of this act in the case of all such persons who have died within five years last past. [*Thus amended by L. 1881, ch. 389.*]

79 N. Y., 490; 8 Daly, 1; 23 W. D., 81; 13 Daly, 354.

Certificate to be executed by person continuing business and filed and published. § 2. In case any business shall be continued in the name of any such deceased person as in this act provided, the person or persons continuing such business shall execute and duly acknowledge a certificate setting forth the person or persons dealing or intending to deal under such name, with their respective places of residence, and file the same in the county where it is intended the principal place of business shall be, and shall cause a copy of such certificate to be published in a newspaper printed in the town or city in which shall be such principal place of business, or if none be printed in such town, then in a newspaper printed in the county town, and in the newspaper printed by the printer to this state for four successive weeks.

County clerk to keep book in which to record certificates. § 3. The county clerk where any such certificate is filed as above provided, shall keep a book in which all such certificates shall be recorded at full length with their date of record, and also a register in which shall be recorded in alphabetical order every name which it shall be certified is to be used as herein provided, and in which shall also be recorded in alphabetical order the names of all persons filing certificates as herein provided, with the date of such filing, and copies of such certificates and an affidavit of advertisements, made as hereinbefore provided, shall be full evidence of the same.

Clerk's fee. § 4. The clerk shall be entitled to a fee of one dollar for recording every such certificate and for entering the name to be used and the name of the person filing such certificate as herein provided; and to a further fee of fifty cents for making and properly certifying a copy of such certificate.

Service of papers, etc. § 5. In case any action or proceeding shall be brought, founded in whole or in part upon any transaction growing out of a business conducted as hereby provided, and the name of such deceased is stated as a defendant, the process and papers in such action may be served on any person or persons using such name with like effect as though such person or persons had been named as defendant by his or their own respective names, and with the same effect as though all such persons were served with process, and the process and all papers may be amended by substituting the name or names of the person or persons using the name of such deceased, and no action shall fail, abate or be in any manner hindered by the name of such deceased being so used.

TITLE I.

TITLE II.

Of promissory Notes, and Bills of Exchange.

- Sac.**
1. Effect of promissory notes payable to order or bearer.
 2. Same effect given to notes signed by an agent.
 3. Word "person," in two last sections, to extend to corporations.
 4. When actions by payees, endorsees and holders to be maintained.
 5. Effect of notes payable to order of maker or of fictitious person.
 6. Acceptances of bills of exchange to be in writing and signed.
 7. If acceptance on separate paper, when, etc., to bind acceptor.

- SEC. 8. When unconditional promise to accept, to be deemed acceptance.
 9. Refusal to accept on bill when required, deemed refusal to accept.
 10. Rights of ~~holders~~ of bills on previous promise to accept, not affected.
 11. When destruction of bill or refusal to return it, deemed acceptance.
 12. When registry of inhabitants of New York to be kept by clerk.
 13. Inhabitants to register names and places to which notices, etc., to be sent.
 14. Drafts, etc., may be presented, and notices, etc., served, at place designated.
 15. If registry not made, drafts, etc., may be presented to clerk.
 16. And notices, etc., may be served by leaving at post-office.
 17. When preceding provisions not to operate.
 18. Rates of damages on protest for non-payment of bills of exchange.
 19. Damages in lieu of interest, etc., to time of notice of non-payment.
 20. If bill payable in money of United States, rate of exchange not to be regarded.
 21. If payable in foreign currency, amount due to depend on rate of exchange.
 22. Rate of damages on protest of bill for non-acceptance.
 23. Purchasers of bills only to recover damages herein allowed.

TITLE 2.

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SECTION 1. All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person, or his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable, as therein expressed; and shall have the same effect, and be negotiable in like manner, as inland bills of exchange, according to the custom of merchants.

Promissory notes payable to order or to bearer, negotiable. Their effect.
 6 N. Y., 19, 20; 2 Hill., 527; 39 Barb., 45; 205; 61 N. Y., 251; 14 Hun, 193; 64 N. Y., 155; 66 N. Y., 14; 23 Hun, 354.

57 N. Y., 73; 53 N. Y., 1; 54 N. Y., 284; 40 How. Pr. E., 411; 44 How. Pr. E., 7; 60 N. Y., 251; 14 Hun, 193; 64 N. Y., 155; 66 N. Y., 14; 23 Hun, 354.

[1 R. L., 151.]

§ 2. Every such note, signed by the agent of any person, under a general or special authority, shall bind such person, and shall have the same effect, and be negotiable, as above provided.

Signature by agent.

[1 R. L., 151.]

§ 3. The word "person," in the two last preceding sections, shall be construed to extend to every corporation, capable by law of making contracts.

Corporations included.
 23 Barb., 176; 5 Denio, 567, 577.

§ 4. The payees and endorsees of every such note payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, against the makers and endorsers of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

Actions by payees, endorsees and holders.

[1 R. L., 151.]

§ 5. Such notes, made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect, and be of the same validity, as against the maker and all persons having knowledge of the facts, as if payable to bearer.

Effect when payable to order of maker, etc.
 3 Hill, 115; 2 Sandf. 8. C., 138; 4 E. D. Smith, N. Y., 536.

85; 1 Bosw., 205; 9 J. & S., 215; 7 Daly, 137; 61 N. Y., 251; 79

§ 6. No person within this state shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself, or his lawful agent.

Acceptances to be in writing, &c.

8 J. & S., 15; 9 N. Y., 584; 8 N. Y., 596; 5 Hill, 413; 3 Hill, 583; 1 Hill, 84, 584; 5 Duer, Abb., 66; 46 N. Y., 88; 3 Bosw., 512; 5 id., 291; 2 Duer, 121; 54 N. Y., 234; 23 Hun, 396; 447; 83 N. Y., 318.

15 Hun, 406; 377; 10 101 N. Y., Y., 318.

§ 7. If such acceptance be written on a paper, other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

Effect of acceptance on separate paper.
 9 N. Y., 435, 441; 3 Bosw., 512; 5 id., 291.

TITLE 2.

Written
promises
to accept
57 N. Y.,
459; 5

Bosw., 290;
S., 182; 15

Refusal to
accept on
bill.

Rights of
drawers in
certain
cases, not
to be
affected.
(769)

5 Duer,
377, 583; 37
N. Y., 116.

Destroying
bill or re-
fusal to
return it,
when ac-
ceptance.
11 Hun,
188; 4 Hun,
96, 97.

In case of
pestilence,
in New
York,
registry of
inhabitants
to be kept
by clerk.

Inhabi-
tants to
register
their
names, and
places of
business,
&c.

Fee of
clerk.
Register
may be ex-
amined
gratis.

Accept-
ances, &c.,
may be de-
manded.

Notices,
&c., may
be served
at designa-
ted place.

§ 8. An unconditional promise, in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance, in favor of every person who, upon the faith thereof, shall have received the bill for a valuable consideration.

9 N. Y., 441; 5 Hill, 432; 5 Duer, 583; 17 Wend., 508; 46 N. Y., 88; 3 Bosw., 512; 3 J. & Hun, 406; 3 J. & S., 15; 17 W. D., 538; 10 Daly, 367; 32 Hun, 396; 33 N. Y., 318; 101 N. Y., 442.

§ 9. Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill. A refusal to comply with such request, shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

§ 10. The four last sections shall not be construed to impair the right of any person, to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.

§ 11. Every person, upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill, accepted or non-accepted, to the holder, shall be deemed to have accepted the same.

§ 12. Whenever the board of health of the city of New York, or any other competent authority, shall, by public notice, designate any portion or district of the said city as being the seat of any infectious or contagious disease, and declare communication with such portion or district dangerous, or shall prohibit such communication, it shall be the duty of the clerk of the said city and county, during the continuance of such disease in such district, to provide and keep in his office a book, for the purpose of registering in alphabetical order, the names, firms, and places of business of any inhabitant of the city, who shall desire such registry to be made.

[L. 1826, 12, §§ 1 and 2.]

§ 13. It shall be the duty of all persons and firms usually resident, or doing business, within such infected district, to register in the book so provided by the said clerk, their names or firms, with the place or places out of such infected district, but within the county of New York, to which they may have removed the transaction of their business, or to which they may desire any notices to be sent or served, or any notes, drafts or bills, to be presented for acceptance or for payment. The sum of twenty-five cents may be claimed and received by the said clerk for every such registry; but the book in which the same shall be entered shall be, at all times during office hours, open to public examination, free of all charges.

[L. 1826, 12, §§ 1 and 2.]

§ 14. During the continuance of any such disease in such infected district, all drafts, notes and bills which by law are required to be presented for acceptance or for payment, may be presented for such purpose at the place so designated in such registry; and all notices of non-acceptance and of non-payment, of any note, draft, or bill, or of protest, for such non-acceptance or non-payment, may be served by leaving the same, at the place so designated.

[The same.]

§ 15. In case any person or firm, usually resident or doing business within such infected district, shall neglect to make and cause to be entered in the book so provided, the registry herein required, all notes, drafts or bills, which by law are required to be presented to such person or firm for acceptance or payment, may be presented to the said clerk of the city and county of New York, during the continuance of such disease, at any time during office hours, and demand of acceptance or payment thereof, may be made of the said clerk, to the same purpose and with the same effect, as if the same had been presented, and acceptance or payment demanded, of such person or firm, at their usual place of doing business.

[The same.]

§ 16. In case of the omission to make the registry herein required, all notices of the non-acceptance or non-payment of any note, draft or bill, or of protest for such non-acceptance or non-payment, may be served on any person or firm, usually resident or doing business within such infected district, by leaving the same at the post-office for the said city of New York; which service shall be as valid and effectual as if the notices had been served personally, on such person, or one of such firm, at his or their usual place of doing business.

[L. 1823, 268.]

§ 17. Whenever proclamation shall be made by the board of health, or other proper authority of the city of New York, that an infectious or contagious disease in any such infected district has subsided, it shall be deemed to have subsided, for all the purposes contemplated in this title.

[L. 1824, 12, §§ 1 and 2.]

§ 18. The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange, drawn or negotiated within this state, shall, in the following cases, be as follows:

1. If such bill shall have been drawn upon any person or persons at any place in either of the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Ohio, Delaware, Maryland or Virginia, or in the District of Columbia, three dollars upon the hundred, upon the principal sum specified in such bill:

2. If such bill shall have been drawn upon any person or persons at any place in either of the states of North Carolina, South Carolina, Georgia, Kentucky or Tennessee, five dollars upon the hundred, upon the principal sum specified in such bill:

3. If such bill be drawn upon any person or persons at any place, in any other state or territory of the United States, or at any other place on, or adjacent to, this continent and north of the equator, or in any British or other foreign possessions in the West Indies, or elsewhere in the western Atlantic ocean, ten dollars upon the hundred, upon the principal sum specified in such bill:

[L. 1819, 34.]

4. If such bill shall have been drawn upon any person or persons at any port or place in Europe, ten dollars upon the hundred, upon the principal sum specified in such bill.

TITLE 2.

If registry not made, drafts, &c., may be presented to clerk.

[770]

And notices, &c., may be left at post-office.

When pestilence deemed to have subsided.

Damages on non-payment of bills.
3 How. Pr. R., 60; 6 Robt., 117; 3 Sandf., 213.

Bills on certain northern and western states.

On certain southern and western states.

On other states and places on this continent, &c.

Bills on Europe.

TITLE 2.

Damages to be in lieu of certain interest, charges, etc.

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§ 19. Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-payment; but the holder of such bill shall be entitled to demand and recover lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given, and payment of such principal sum shall have been demanded.

[L. 1819, 34.]

No reference to rate of exchange when payable in money of U. States.

§ 20. If the contents of such bill be expressed in the money of account of the United States, the amount due thereon, and of the damages herein allowed for the non-payment thereof, shall be ascertained and determined, without any reference to the rate of exchange, existing between this state and the place on which such bill shall have been drawn, at the time of the demand of payment, or of notice of non-payment.

[L. 1819, 34.]

Otherwise when payable in foreign currency. 2 Hilt., 83; 18 Abb.Pr., 45.

§ 21. If the contents of such bill be expressed in the money of account or currency of any foreign country, then the amount due, exclusive of the damages payable thereon, shall be ascertained and determined by the rate of exchange, or the value of such foreign currency, at the time of the demand of payment.

[L. 1819, 34.]

Damages on non-acceptance of bills. 18 Abb.Pr., 45.

§ 22. Where a bill of exchange shall be protested for non-acceptance, the same rate of damages shall be allowed on the protest for non-acceptance, as provided in the four last sections; and shall be in lieu of interest, charges of protest, and all other charges incurred previous to, and at the time of giving notice of non-acceptance; but the holder shall be entitled to recover interest upon the aggregate amount of the principal sum specified in the bill and of the damages thereon, from the time at which notice of protest for non-acceptance shall have been given.

[Act concerning the Revised Statutes, passed December 10, 1828, § 15, subd. 30.]

Who to recover such damages.

§ 23. The damages allowed by this title, shall be recovered only by the holder of a bill who shall have purchased the same, or some interest therein, for a valuable consideration.

[The same.]

[Supplementary Title.]

TITLE 2^A.

Of miscellaneous Instruments for the Payment of Money.

L. 1835, Chap. 141 — An act in relation to bills of exchange and promissory notes.

Notice of protest, how to be given. SECTION 1. In all cases where a notice of non-acceptance of a bill of exchange, or non-payment of a bill of exchange, promissory note, or other negotiable instrument may be given by sending the same by mail, it shall be sufficient if such notice be directed to the city or town where the person sought to be charged by such notice resided at the time of drawing, mak-

ing or endorsing such bill of exchange, promissory note or other negotiable instrument, unless such person at the time of affixing his signature to such bill, note or other negotiable instrument, shall in addition thereto specify thereon the post-office to which he may require the notice to be addressed.

Saving clause. § 2. Nothing in this act shall apply to bills of exchange, promissory notes, or other negotiable instruments made or drawn before this act takes effect.

3 N. Y., 444; 25 Barb., 140; 7 Hill, 444; 24 Wend., 284 · 23 Wend., 620; 21 Wend., 12; 19 Wend., 384; 45 Barb., 666; 9 Bosw., 308.

L. 1857, Chap. 416—An act in relation to commercial paper.

Sight drafts. SECTION 1. All bills of exchange or drafts, drawn payable at sight at any place within this state, shall be deemed due and payable on presentation, without any days of grace being allowed thereon.

49 N. Y., 269.

Checks, bills of exchange, etc. § 2. All checks, bills of exchange or drafts, appearing on their face to have been drawn upon any bank or upon any banking association or individual banker, carrying on banking business under the act to authorise the business of banking, which are on their face payable on any specified day or in any number of days after the date or sight thereof, shall be deemed due and payable on the day mentioned for the payment of the same, without any days of grace being allowed, and it shall not be necessary to protest the same for non-acceptance.

49 N. Y., 269.

Manner of protesting. § 3. Whenever the residence or place of business of the endorser of a promissory note, or of the drawer or endorser of a check, draft or bill of exchange, shall be in the city or town, or whenever the city or town indicated under the endorsement or signature of such endorser or drawer, as his or her place of residence, or whenever in the absence of such indication, the city or town where such endorser or drawer, from the best information obtained by diligent inquiry, is reputed to reside or have a place of business, shall be the same city or town where such promissory note, check, draft or bill of exchange is payable or legally presented for payment, or acceptance, all notices of non-payment and of non-acceptance of such promissory note, check, draft or bill of exchange may be served by depositing them, with the postage thereon prepaid, in the post-office of the city or town where such promissory note, check, draft, or bill of exchange was payable or legally presented for payment or acceptance, directed to the endorser or drawer, at such city or town.

51 N. Y., 144; 9 Bosw., 308.

Restriction. § 4. This act shall take effect on the first day of July next, but shall not apply to any bills of exchange, checks, drafts or promissory notes bearing date prior to that time.

L. 1865, Chap. 309—An act in relation to evidence in actions on bills of exchange or promissory notes or bank checks.

Protest of foreign bills. SECTION 1. Any bill of exchange, promissory note or bank check which by its terms is payable in any of the states or territories of the United States other than this state, or in any foreign country, may be presented for acceptance or payment, and demand of such acceptance or payment, and protest for refusal to accept or to pay the same, and notice of such presentment, demand, refusal and protest may be made, according to the laws of such other state, territory or foreign country. [*The remainder of this section repealed by L. 1877, ch. 417.*]

L. 1870, Chap. 438—An act to authorize the owners and holders of certain bonds payable to bearer to render the same payable only to order.

Negotiability, how limited. SECTION 1. It shall be lawful for the owners or holders of any bond issued by any village, town, city or county in this state, pursuant to law, and made payable to the bearer thereof, to render such bonds non-negotiable, except by the owner's indorsement, by indorsing upon the same, and subscribing a statement, that said bond is the property of such owner, and thereupon the principal sum of money mentioned in said bond shall only be payable to said owner, or his legal representatives or assigns.

[See L. 1873, ch. 595, *post.*]

L. 1871, Chap. 84—An act to authorize the owners and holders of certain railroad mortgage bonds made payable to bearer, to render the same payable to order only.

Railroad and other corporate bonds, how made non-negotiable. SECTION 1. It shall be lawful for any person or persons owning and holding any railroad mortgage bonds, or other corporate bonds (for which a registry is not by law provided) heretofore issued or which may be hereafter issued and made payable in this state, and which are made payable to bearer, to render the same non-negotiable by the owner and holder indorsing upon the same and subscribing a statement that said bond is the property of such owner. And thereupon the principal sum of money mentioned in said bond shall only be payable to such owner or his legal representatives or assigns.

Transfers, how made. § 2. The bonds described and referred to in the first section of this act may be transferred by an indorsement in blank, giving name and residence of assignor, or they may be transferred by an indorsement payable to bearer or to the order of the purchaser (naming him), subscribed by the assignor, giving name and place of residence.

L. 1873, Chap. 595—An act relative to certain negotiable corporate bonds and obligations.

How owner may make bonds non-negotiable. SECTION 1. The owner or holder of any corporate or municipal bond or obligation (except such as are designed to circulate as currency), payable to bearer, heretofore issued, or which may hereafter be issued, and payable in this state, but not registered in pursuance of any law thereof, may make the same non-negotiable (except as provided in the second section of this act,) by subscribing his name to a statement indorsed thereon that such bond or obligation is his property; and thereupon the principal sum therein mentioned shall be payable only to such owner or holder, or his legal representatives or assigns.

How transferred after such indorsement. § 2. The bonds and obligations mentioned in the last section, after having been indorsed as therein provided, may be transferred by an indorsement, in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence.

To apply to interest coupons. § 3. The provisions of this act shall apply to all interest coupons accompanying any corporate or municipal bond or obligation payable in this state.

Repeal. § 4. So much of chapter eighty-four of the laws of one thousand eight hundred and seventy-one, entitled "An act to authorize the owners and holders of certain railroad mortgage bonds, made payable to bearer, to render the same payable to order only," as is inconsistent with this act, is hereby repealed.

L. 1885, Chap. 426—An act to enable owners of coupon bonds to convert them into registered bonds.

Coupon bonds to be converted into registered bonds. SECTION 1. Whenever any owner of coupon bonds issued by any county, city, town or village of this state, shall present any of such bonds to the officers who issued the same, or to their successors in office, with a request in writing specifying said bonds, and asking for the conversion of the same into registered bonds, such officers shall cut off the coupons attached to said bonds, and shall stamp, print or write, upon each bond, a statement, properly dated, of the number and value of the coupons so cut off, and also a statement that it is the property of the said owner, and that the interest at the rate, and on the date, as was provided by the coupons, as well as the principal of the said bond at maturity, is to be paid to said owner or to his, her, its or their attorney, assigns, successors or legal representatives, at a place of payment to be specified in said statement, which place is not to be changed from that named in the said coupons without consent in writing by said owner.

Books to be provided at expense of owners of bonds. § 2. At the expense of the owner or owners of such bonds, the said county, city, town or village shall provide a suitable and sufficient book or books in which shall be entered a full description of the amount, class, number, date of issue, and date of maturity of each bond so presented, and thereafter interest thereupon, as provided by said coupons, shall be paid only to such registered owner or on his order, and the said bond shall be transferred only on its presentation with an assignment in writing, to be duly acknowledged and proved, as deeds are by law required to be acknowledged and proved in order to entitle them to be recorded, the name of the assignee to be by the aforesaid officers entered upon the bond so transferred and in the book above ordered to be provided.

Destruction of coupon bonds. § 3. The board of supervisors of each county, the common council of each city, the board of trustees of each village, and the town board of each town, which has issued coupon bonds, is hereby directed, at their next regular meeting, to provide formally for the destruction of all the said coupons and for the due authentication of such destruction.

Application of act limited. § 4. This act shall not apply where provision by law or local ordinance has already been made for the exchange or conversion of coupon bonds to registered bonds.

L. 1875, Chap. 27—An act to designate the holidays to be observed in the acceptance and payment of bills of exchange, bank checks and promissory notes, and relating to the closing of public offices. [*Title thus amended by L. 1881, ch. 30.*]

Days to be considered as public holidays; no business to be transacted in public offices on holidays. SECTION 1. The following days and half-days, namely: The first day of January, commonly called New Year's day; the twenty-second day of February, known as Washington's birthday; the thirtieth day of May, known as Decoration day; the fourth day of July, called Independence day; the first Monday of September, to be known hereafter as Labor day; the twenty-fifth

day of December, known as Christmas day; any general election day. in this state; every Saturday from twelve o'clock at noon until twelve o'clock at midnight, which is hereby designated a half-holiday; and any day appointed or recommended by the governor of this state, or the president of the United States, as a day of thanksgiving, or fasting and prayer, or other religious observance, shall, for all purposes whatever as regards the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, made after the passage of this act, be treated and considered as the first day of the week commonly called Sunday, and as public holidays or half-holidays; and all such bills, checks and notes otherwise presentable for acceptance or payment on any of the said days shall be deemed to be payable and be presentable for acceptance or payment on the secular or business day next succeeding such holiday; but in the case of a half-holiday shall be presentable for acceptance or payment at or before twelve o'clock noon of that day. Provided, however, that for the purpose of protesting or otherwise holding liable any party to any bill of exchange, check or promissory note, and which shall not have been paid before twelve o'clock at noon on any Saturday, a demand of acceptance or payment thereof may be made and notice of protest or dishonor thereof may be given on the next succeeding secular or business day. And provided, further, that when any person shall receive for collection any check, bill of exchange or promissory note, due and presentable for acceptance or payment on any Saturday, such person shall not be deemed guilty of any neglect or omission of duty, nor incur any liability in not presenting for payment or acceptance, or collecting such check, bill of exchange or promissory note on that day. And provided, further, that in construing this section every Saturday, unless a whole holiday as aforesaid, shall until twelve o'clock noon be deemed a secular or business day. And the days and half days aforesaid shall be considered as the first day of the week, commonly called Sunday, and as public holidays or half-holidays, for all purposes whatsoever as regards the transaction of business in the public offices of this state, or counties of this state. On all other days, or half-days, excepting Sundays, such offices shall be kept open for the transaction of business. [*Thus amended by L. 1887, ch. 289, superseding L. 1881, ch. 30.*]

Where holidays fall on Sunday. § 2. Whenever the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, or the twenty-fifth day of December shall fall upon Sunday, the Monday next following shall be deemed a public holiday for all or any of the purposes aforesaid; provided, however, that in such case all bills of exchange, checks and promissory notes, made after the passage of this act, which would otherwise be presentable for acceptance or payment on the said Monday, shall be deemed to be presentable for acceptance or payment on the secular or business day next succeeding such holiday. [*Thus amended by L. 1887, ch. 289.*]

50 How. Pr. R., 313.

[The foregoing act, L. 1875, ch. 27, appears to supersede the following prior statutes upon the same subject: L. 1849, ch. 261; L. 1865, ch. 146; L. 1870, ch. 370; L. 1872, ch. 544; L. 1873, ch. 577, and ch. 639.]

L. 1887, Chap. 461 — An act to fix the time of payment of certain commercial paper.

When bills, etc., payable, which mature upon a half-holiday. SECTION 1. All bills of exchange and promissory notes made after the passage of this act, except those payable at sight, or on demand, which shall be otherwise payable on any half-holiday Saturday, shall be deemed to be and shall be payable on the next succeeding secular or business day.

Id., as to those maturing on Sunday. § 2. All bills of exchange, checks and promissory notes made after the passage of this act, which by the terms thereof shall be payable on the first day of the week commonly called Sunday, shall be deemed to be and shall be payable on the next succeeding secular or business day.

L. 1888, Chap. 229—An act to designate April thirtieth, eighteen hundred and eighty-nine, the one hundredth anniversary of the inauguration of George Washington as first President of the United States, a holiday to be observed in the acceptance and payment of bills of exchange, bank cheques and promissory notes, and in the closing of public offices.

Holiday established; effect upon notes, etc., and public business. SECTION 1. The thirtieth day of April, eighteen hundred and eighty-nine, being the one hundredth anniversary of the inauguration of George Washington as first President of the United States, in the city of New York, shall for all purposes whatsoever in respect to the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor, of bills of exchange, bank cheques and promissory notes, be treated and considered as the first day of the week commonly called Sunday and a public holiday. And all such bills, cheques and notes otherwise presentable for acceptance or payment on said day, shall be deemed to be presentable for acceptance or payment on the twenty-ninth day of April, eighteen hundred and eighty-nine. And the said thirtieth day of April, eighteen hundred and eighty-nine, shall be considered as the first day of the week commonly called Sunday, and as a public holiday, for all purposes whatsoever in respect to the transaction of business in the public offices of this state or the counties of this state.

L. 1877, Chap. 65—An act to regulate the execution and transfer of negotiable instruments given for patent rights.

Negotiable instruments given for patent right. SECTION 1. Whenever any promissory note or other negotiable instrument shall be given, the consideration of which shall consist in whole or in part of the right to make, use or vend any patent invention or inventions, claimed or represented by the vendor at the time of sale to be patented, the words "given for a patent right," shall be prominently and legibly written or printed on the face of such note or instrument above the signature thereto; and such note or instrument in the hands of any purchaser or holder shall be subject to the same defences as in the hands of the original owner or holder.

3 How. Pr., N. S., 65; 39 Hun, 198.

Punishment for disobeying. § 2. If any person shall take, sell or transfer any promissory note or other negotiable instrument not having the words "given for a patent right" written or printed legibly and prominently on the face of such note or instrument, above the signature thereto, knowing the consideration of such note or instrument to consist in whole or in part of the right to make, use or vend any patent invention or inventions, claimed as aforesaid to be patented, every such person or persons shall be deemed guilty of a misdemeanor.

Limitation. § 3. This act shall not apply to a promissory note given solely for the purchase price or the use of a patented article.

[Supplementary Title.]

TITLE 2^B.*Of Chattel Mortgages, including Liens on Canal Boats.*

L. 1833, Chap. 279—An act requiring mortgages of personal property to be filed in the town clerk's and other offices.

Chattel mortgages void unless filed. SECTION 1. Every mortgage, or conveyance intended to operate as a mortgage, of goods and chattels hereafter made, which shall not be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, shall be filed as directed in the succeeding section of this act.

45 N. Y., 621; 44 N. Y., 347; 35 N. Y., 274, 279; 28 N. Y., 256; 27 N. Y., 568; 44 Barb., 266; 47 Barb., 104; 17 N. Y., 582; 4 N. Y., 598; 3 N. Y., 311; 31 Barb., 596; 17 Wend., 495; 2 Sweeny, 226; 19 Abb. Pr. R., 354; 2 Lans., 131; 52 N. Y., 185; 54 N. Y., 675; 71 N. Y., 341; 17 Hun, 120; 69 N. Y., 69; 66 Barb., 43; 11 Hun, 634; 15 Hun, 81; 7 Daly, 675; 16 Hun, 458; 62 N. Y., 215; 7 Hun, 238; 71 N. Y., 341; 68 N. Y., 629; 73 N. Y., 609; 77 N. Y., 628; 18 Hun, 467; 23 Hun, 494; 25 Hun, 640; 33 Hun, 557; 19 W. D., 476; 66 How. Pr., 49; 21 J. & S., 480; 84 N. Y., 634; 94 N. Y., 160; 43 Hun, 147; 42 Hun, 291.

[See L. 1868, ch. 779, *ante*, p. 1783.]

How and where to be filed. § 2. The instruments mentioned in the preceding section shall be filed in the several towns and cities of this state where the mortgagor therein, if a resident of this state, shall reside at the time of the execution thereof; and if not a resident, then in the city or town where the property so mortgaged shall be at the time of the execution of such instrument. In the city of New York, such instrument shall be filed in the office of the register of said city. In the several cities of this state, other than the city of New York, and in the several towns of this state in which a county clerk's office is kept, in such office; and in each of the other towns in this state, in the office of the town clerk thereof; and such register and clerks are hereby required to file all such instruments aforesaid presented to them respectively for that purpose, and to endorse thereon the time of receiving the same, and shall deposit the same in their respective offices, to be kept there for the inspection of all persons interested.

1 Denio, 580; 44 N. Y., 247; 1 Robt., 93; 54 N. Y., 97, 314; 18 Barb., 193; 25 Barb., 487; 21 Barb., 202; 16 Barb., 46; 13 Barb., 329; 12 Barb., 678; 47 Barb., 104; 18 N. Y., 556; 17 Barb., 523; 15 Hun, 383; 18 Hun, 171; 11 J. & S., 335; 42 Hun, 410; 14 W. D., 241; 26 Hun, 353; 29 Hun, 584; 94 N. Y., 160.

When mortgage to cease to be valid; renewal. § 3. Every mortgage filed in pursuance of this act shall cease to be valid as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless, within thirty days next preceding the expiration of each and every term of one year after the filing of such mortgage, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property thereby claimed by him by virtue thereof, shall be again filed in the office of the clerk or register aforesaid of the town or city where the mortgagor shall then reside, if the mortgagor shall then be a resident of this state; and if not such resident, then in the office of the clerk or register of the town or city where the property so mortgaged was at the time of the execution of such mortgage. [*Thus amended by L. 1879, ch. 418.*]

19 N. Y., 497; 14 N. Y., 72; 13 N. Y., 561; 30 Barb., 486; 12 Barb., 534, 678; 8 Barb., 102; 1 Denio, 163; 1 Hill, 473; 28 N. Y., 277; 54 N. Y., 97; *id.*, 675; 20 Wend., 17; 5 T. & C., 27; 2 Hun, 449; 4 T. & C., 279; 2 Hun, 67; 64 Barb., 563; 52 N. Y., 185; 66 *id.*, 606; 6 Bosw., 396; 11 Hun., 634; 37 N. Y., 198; 4 Abb., N. S., 321; 14 *id.*, 20; 8 Bosw., 408; 22 Hun, 11; 14 W. D., 332; 33 Hun, 247; 40 Hun, 323; 92 Y. Y., 20; 29 Hun, 584; 43 Hun, 164.

[Section 3 of the act of 1833 was amended by L. 1878, ch. 501, which contained but one section. The act of 1879 purports to amend § 3 of the act of 1878, so as to read as above.]

A copy to be received in evidence. § 4. A copy of any such original instrument, or of any copy thereof, so filed as aforesaid, including any statement made in pursuance of this act, certified by the clerk or register in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument or copy, and statement, was received and filed according to the endorsement of the clerk or register thereon, and of no other fact; and in all cases the original endorsement by the clerk or register, made in pursuance of this act upon such instrument or copy, shall be received in evidence only of the facts stated in such endorsement.

16 Barb., 64; 39 How. Pr. R., 504; 42 Hun, 297.

Mortgages to be numbered. § 5. The register of the city and county of New York, and the clerk of the city and county of Albany, shall respectively number every such instrument or copy which shall be filed in their offices, and shall enter in books to be provided by them, alphabetically, the names of all the parties to such instrument, with the number endorsed thereon opposite to each name; which entry shall be repeated alphabetically under the name of every party thereto.

Fees. § 6. For services under this act, the clerks and registers shall be entitled to receive the following fees: For filing each instrument or copy, six cents; for entering the same in a book as aforesaid, in the said cities of Albany and New York, six cents for every party to such instrument; for searching for each paper six cents; and the like fees for certified copies of such instruments or copies, as are allowed by law to clerks of counties for copies and certificates of records kept by them.

L. 1849, ch. 69—An act requiring chattel mortgages to be registered.

Mortgages to be registered. SECTION 1. It shall be the duty of the clerks of the several towns and counties in this state, in whose offices chattel mortgages are by law required to be filed, to provide proper books, at the expense of their respective towns in which the names of all parties to every mortgage, or instrument intended to operate as a mortgage of goods and chattels, hereafter filed by them or either of them, shall be entered in alphabetical order, under the head of mortgagors and mortgagees, in each of such books respectively.

18 Barb., 202.

To be numbered. § 2. It shall be the duty of the said several clerks to number every such mortgage or copy so filed in said office, by endorsing the number on the back thereof, and to enter such number in a separate column in the books in which such mortgages shall be entered, opposite to the name of every party thereto, also the date, the amount secured thereby, when due, and the date of the filing of every such mortgage.

18 Barb., 202.

Fees. § 3. The said several clerks for services under this act, shall be entitled to receive therefor the following fees: for filing every such mortgage or copy, six cents; for entering the same in books as aforesaid, six cents.

L. 1858, Chap. 247—An act to provide for the registry of liens and incumbrances upon boats and crafts navigating the canals of this state.

Liens to be registered in office of auditor.* SECTION 1. Any person having any lien or incumbrance on any canal boat, steam tug, scow or other craft navigating the canals of this state, by a chattel mortgage duly filed, may make a statement in

* See L. 1883, ch. 69, abolishing the office of auditor, *ante*, p. 510.

writing setting forth the nature of his claim, the time when the same arose, the manner in which it originated, and the amount of such lien or incumbrance; and may annex thereto an affidavit made by himself or his agent or attorney, that the said statement is correct, and the claim just and true, and file the same in the office of the auditor.

2 Hun, 449.

Auditor's duty. § 2. It shall be the duty of the said auditor, on the receipt of the said statement, to file the same in his office, and to enter the substance in a book to be provided for that purpose, and the amount, if any, claimed to be due, which book shall always during office hours be open for the inspection of all persons desiring to examine the same.

Preference of liens. § 3. All claims and liens by chattel mortgage, a statement of which shall be filed as herein provided, shall from the time of such filing have preference and priority over all other claims and liens, in the same manner and to the like extent of claims and liens arising on chattel mortgages filed and entered in towns where the mortgagor resides, but shall not have any priority over existing liens and claims.

35 Barb., 337.

Fees for filing. § 4. The auditor shall charge for filing the said statement and making the entry thereof as herein provided, the sum of fifty cents, and he shall not be obliged to file or enter the same until such sum is paid.

Statement evidence. § 5. Any statement made and filed as herein provided, and copies thereof duly certified by the auditor in the manner required by law, may be read and used as evidence in all courts of justice.

L. 1864, Chap. 412—An act to amend an act entitled “An act to provide for the registry of liens and incumbrances upon boats navigating the canals in this state,” passed April fifteenth, eighteen hundred and fifty-eight.

Mortgages to be filed in canal department.* SECTION 1. Hereafter any person having any lien or incumbrance on any canal boat, steam tug, scow, or other craft navigating the canals of this state, by a chattel mortgage, shall file the same, or a true copy thereof, in the office of the auditor of the canal department.

Mortgages not filed become void. § 2. Hereafter every mortgage or conveyance intended to operate as a mortgage of any canal boat, steam tug, scow or other craft navigating the canals of this state, together with the appurtenances belonging thereto and used in navigating such craft, hereafter made, which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the property mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, shall be filed as directed in the previous section of this act.

34 Hun, 167; rev'd 107 N. Y., 83.

Annual filing. § 3. Every mortgage filed in pursuance of this act shall cease to be valid as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the said term of one year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property thereby claimed by him by virtue thereof, shall be again filed as directed in the first section of this act.

Auditor shall record mortgages. § 4. It shall be the duty of the said auditor on the receipt of the mortgage, or copy thereof, to cause every such instrument to

* See L. 1883, ch. 69, abolishing the office of auditor. *ante*, p. 510.

be respectively numbered, the time of receiving the same to be endorsed thereon, and the substance thereof to be entered in a book provided for that purpose, entering alphabetically the names of all the parties to such instrument, with the number endorsed thereon opposite to each name; which entry shall be repeated in the index alphabetically under the name of every party thereto, also indexing the name of each boat mortgaged, with the number of the mortgage opposite to each; which book of mortgages and index shall always, during office hours, be open for the inspection of all persons desiring to examine the same.

When preferred liens. § 5. All claims and liens by chattel mortgage which shall be filed as herein provided, shall, from the time of such filing, have preference and priority over all other claims and liens, but shall not have any priority over existing claims and liens.

Certified copies, evidence. § 6. A copy of any such original instrument, or of any copy thereof, so filed as aforesaid, including any statement made in pursuance of this act, certified by the auditor or his deputy, may be read and used as evidence in all courts of justice, but only of the fact that such instrument or copy and statement was received and filed according to the endorsement of the register thereon, and of no other fact; and in all cases the original endorsement by the clerk, or register made in pursuance of this act, upon such instrument and copy, shall be received in evidence of the facts stated in such endorsement.

Fees of auditor. § 7. The auditor aforesaid shall designate a clerk, who shall act as register, and the auditor shall be entitled to receive the following fees for services under this act, for the use of the state; for filing each instrument or copy and entering the same in a book as aforesaid, twenty-five cents; for searching for each paper, twenty cents; and the like fees for certified copies of such instruments or copies, as are allowed under existing laws to be charged by the auditor for copies and certificates of record kept in the canal department; and the said auditor shall not be obliged to file or enter, or cause to be filed or entered, any mortgage or copy thereof, until the fee provided under this section is paid.

Change of names of boats and hailing places. § 8. The auditor aforesaid shall not grant permission to change the name or hailing place of any canal-boat, steam-tug, scow or other craft navigating the canals of this state, upon which there is an existing lien or mortgage filed in the canal department, unless it shall be necessary to make the name or hailing place conform to the United States custom-house regulations, by reason of a change of name on the canal, after having been registered at the custom-house; and any boat, steam-tug, scow, or other craft found navigating the canals of this state, the registered name or hailing place of which shall have been changed without the written permission of the auditor of the canal department, shall, upon due proof thereof, pay a fine not less than fifty nor more than three hundred dollars.

L. 1879, Chap. 171—An act to provide for discharging chattel mortgages.

How discharged of record. SECTION 1. Whenever any mortgagor, or any person obtaining title to mortgaged property, shall present to any recorder, county or town clerk, in whose office a chattel mortgage executed by said mortgagor on such property may be filed, a certificate from the mortgagee therein named, or the holder or owner thereof, that such mortgage is paid or satisfied, it shall be the duty of such recorder or either of the clerks above mentioned, to file such certificate in his office and discharge such mortgage, by writing in the book kept by such recorder or either of such clerks, and opposite the entry therein of such mortgage, the word "discharged" with the date thereof.

L. 1887, Chap. 528—An act in relation to the registry of boats navigating the canals of this state.

Comptroller's duties transferred to superintendent of public works. **SECTION 1.** All the powers and duties of the comptroller in relation to the registry of boats navigating the canals of this state, and to the changing of the registered names of such boats, are hereby transferred to and made incumbent upon the superintendent of public works.

TITLE 3.

TITLE III.

Of the Interest of Money.

- SMC.**
1. Rate of interest to continue at seven [six] per cent.
 2. Prohibition against taking greater interest.
 3. Persons paying greater interest may recover it back in one year.
 4. When superintendents and overseers of poor may recover excess.
 5. Contracts, etc., for greater rate, void.
 6. Offenders compelled to answer bills of discovery.
 7. Discovery and return of excess, to exonerate from further penalty.
 8. Party filing bill not to pay interest on sum loaned; nor to pay principal.
 9. How months and days to be considered in casting interest.
 10. Interest to be calculated by the year, when no time for that purpose is stated.

Six per cent to be rate of interest.

SECTION 1. The rate of interest upon the loan or forbearance of any money, goods, or things in action shall be six dollars upon one hundred dollars, for one year, and after that rate, for a greater or less sum, or for a longer or shorter time. But nothing herein contained shall be so construed as to in any way affect any contract or obligation made before the passage of this act. [Thus amended by L. 1879, ch. 538.]

12 N. Y., 223; 8 N. Y., 148; 3 N. Y., 502; 23 Barb., 559; 31 Barb., 255; 23 Barb., 118; 17 Barb., 454; 16 Barb., 531; 13 Barb., 343; 11 Barb., 80; 4 Hill, 324; Hill & Denio, 65; 9 Abb., 124; 1 Duer, 369; 1 Wend., 555; 23 How. Pr. R., 5; 20 How. Pr. R., 519; 16 How. Pr. R., 608; 15 How. Pr. R., 29; 7 Johns. Ch. R., 60; 6 Johns. Ch. R., 85, 313; 5 Johns. Ch. R., 134; 3 Johns. Ch. R., 395; 3 Johns. Ch. R., 182; 1 Johns. Ch. R., 537; 40 Barb., 155; 51 N. Y., 48; 16 Hun, 359; 5 Daly, 361; 14 W. D., 92; 16 W. D., 21, 53, 231, 302; 22 W. D., 195; 21 J. & S., 43; 20 Hun, 129; 30 Hun, 201; 31 Hun, 553; 41 Hun, 47; 81 N. Y., 226; 87 N. Y., 50, 430; 89 N. Y., 412; 90 N. Y., 303, 549, 644; 91 N. Y., 43, 199, 324; 93 N. Y., 34; 93 N. Y., 686; 94 N. Y., 354, 641; 95 N. Y., 428; 34 Hun, 192; 34 N. Y., 471; 86 N. Y., 401; 26 Hun, 104, 546; 105 N. Y., 670.

[1 R. L., 64, §§ 1 and 2.]

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Greater interest prohibited.

§ 2. No person or corporation shall, directly or indirectly, take or receive in money, goods or things in action, or in any other way, any greater sum or greater value, for the loan or forbearance of any money, goods or things in action, than is above described.

21 N. Y., 219, 531; 14 N. Y., 94; 12 N. Y., 229; 9 N. Y., 243; 7 N. Y., 323, 367; 5 N. Y., 180, 317; 3 N. Y., 355; 13 Barb., 343; 5 Barb., 42; 2 Barb., 56; 1 Barb., 434, 632; 4 Hill, 211, 224; 1 Denio, 153; 3 Wend., 62; 3 Edw., 273; 35 N. Y., 494; 51 N. Y., 43; 33 N. Y., 61, 83; 33 N. Y., 614; 32 N. Y., 165; 65 N. Y., 306; 50 N. Y., 437; 56 N. Y., 659; 55 N. Y., 621; 4 T. & C., 424; 5 Daly, 304; 65 Barb., 30; 3 T. & C., 311; 5 Daly, 497; 54 N. Y., 630, 647; 6 Hun, 46; 12 Hun, 598; 55 How. Pr. R., 19; 111; 63 N. Y., 619; 69 N. Y., 248; 65 N. Y., 522; 16 Hun, 307; 52 How. Pr. R., 387; 66 N. Y., 214; 62 N. Y., 344; 14 Hun, 537; 53 How. Pr. R., 819; 6 Abb. N. C., 196; 15 Hun, 51; 6 Hun, 233; 74 N. Y., 607; 66 N. Y., 446; 111, 554; 12 Hun, 574; 70 N. Y., 229; 68 N. Y., 396; 74 N. Y., 516; 111, 829; 79 N. Y., 224; 8 Abb. N. C., 390; 77 N. Y., 616; 20 Hun, 153; 22 Hun, 15; 111, 164; 80 N. Y., 196; 81 N. Y., 15; 111, 393; 111, 363; 111, 567; 89 N. Y., 270.

[The same.]

Excess paid may be recovered back in one year.

§ 3. Every person who, for any such loan or forbearance, shall pay or deliver any greater sum or value than is above allowed to be received, and his personal representatives, may recover in an action against the person who shall have taken or received the same, and

his personal representatives, the amount of the money so paid or value delivered, above the rate aforesaid, if such action be brought within one year after such payment or delivery.

TITLE 8.

50 N. Y., 49; 51 N. Y., 48; 1 Bosw., 163; 7 Bosw., 163, 567; 46 Barb., 22; 3 Hun, 347; 23 N. Y., 276; 1 N. Y., 286; 11 Barb., 88; 10 Barb., 580; 5 Barb., 133; Cl. Ch., 16, 70, 442; 20 Johns. R., 290; 6 N. Y., 107; 3 N. Y., 345, 471; 29 N. Y., 515; 27 N. Y., 143; 46 Barb., 31; 41 Barb., 564; 25 How. Pr. R., 328.

[The same.]

§ 4. If such suit be not brought within the said one year, and prosecuted with effect, then the said sum may be sued for and recovered with costs, at any time within three years after the said one year, by any overseer of the poor of the town where such payment may have been made, or by any county superintendent of the poor of the county, in which the payment may have been made.

When to be recovered by overseers of the poor, &c.
51 N. Y., 48; 50 N. Y., 49; 1 Bosw., 163.

§ 5. All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever (except bottomry and respondentia bonds and contracts), and all deposits of goods or other things whatsoever, whereupon or whereby there shall be reserved or taken, or secured or agreed to be reserved or taken, any greater sum, or greater value, for the loan or forbearance of any money, goods or other things in action, than is above prescribed, shall be void; but this act shall not affect such paper as has been made and transferred previous to the time it shall take effect. [Thus amended by L. 1837, ch. 430.]

Contracts for greater sums void.

51 N. Y., 48; 43 N. Y., 197; 20 Barb., 687; 10 Paige, 76, 580; 9 Paige, 197, 226; 1 Sandf. Ch., 187; 3 Edw., 442; 61 Hill, 512; 1 Sandf., 296; 14 N. Y., 93; 12 N. Y., 223, 496; 9 N. Y., 73, 241; 8 N. Y., 282; 7 N. Y., 328; 6 N. Y., 109, 134, 352; 5 N. Y., 178, 315; 4 N. Y., 225, 363, 463; 32 Barb., 559; 29 Barb., 403; 22 Barb., 118; 21 Barb., 181; 19 Barb., 684; 16 Barb., 548; 14 Barb., 146, 573; 13 Barb., 45, 339, 561; 12 Barb., 300; 11 Barb., 80; 10 Barb., 560; 9 Barb., 647; 5 Barb., 130; 1 Hill, 10, 564; 5 Dento, 240; 24 Wend., 115; 15 Wend., 116; 8 Wend., 353, 550; 7 Wend., 569, 256; 5 Wend., 565, 181; 4 Wend., 652, 679; 3 Wend., 408, 296, 62; 1 Wend., 555; 1 Barb. Ch., 43, 251; 2 Cow., 712; 19 Johns. R., 149; 5 Duer, 468; 4 Duer, 358, 408; 2 Duer, 62, 509; 1 Duer, 253; 15 How. Pr. R., 29; 34 N. Y., 31; 40 Barb., 361; 55 N. Y., 640; 4 Daly, 418; 1d., 123; 56 N. Y., 314; 74 N. Y., 607; 14 Hun, 414; 16 Hun, 209; 12 Hun, 574; 52 How. Pr. R., 287; 70 N. Y., 63; 69 N. Y., 248; 12 Hun, 388; 64 N. Y., 294; 61 N. Y., 489; 11 Hun, 119; 15 W. D., 167; 17 W. D., 490, 497; 18 W. D., 570; 17 J. & S., 33; 24 Hun, 231; 25 Hun, 490; 26 Hun, 209; 31 Hun, 106; 33 Hun, 416; 37 Hun, 808; 80 N. Y., 196; 84 N. Y., 627; 85 N. Y., 450; 87 N. Y., 50; 88 N. Y., 211; 91 N. Y., 625; 94 N. Y., 129, 221; 95 N. Y., 340; 13 Daly, 334; 106 N. Y., 70.

§ 6. Every person offending against the provisions of this title, shall be compelled to answer on oath any bill that may be exhibited against him in the court of chancery, for the discovery of any sum of money, goods or things in action so taken, accepted or received, in violation of the foregoing provisions, or either of them.

Offenders compelled to discover.
33 Hun, 7.

[1 R. L., 64, § 4.]

§ 7. Every person who shall discover and repay or return the money, goods, or other things so taken, accepted or received, or the value thereof, shall be acquitted and discharged from any other or further forfeiture, penalty or punishment, which he may have incurred, by taking or receiving the money, goods or other thing so discovered and repaid, or returned, as aforesaid.

Discovery, etc., to bar further penalty.

§ 8. Whenever any borrower of any money, goods or things in action, shall file a bill in chancery for a discovery of the money, goods or things in action, taken or received, in violation of either of the foregoing provisions, it shall not be necessary for him to pay, or offer to pay, any interest whatever on the sum or thing loaned; nor shall any court of equity require or compel the payment or deposit, of the principal sum, or any part thereof, as a condition of granting

Borrower filing bill not to pay interest on sums loaned.
[773]
Not to pay principal borrowed.
30 Barb., 627; 7 Hill, 393; 11

TITLE 3. relief, to the borrower, in any case of a usurious loan forbidden by this chapter.

Wend., 329;
10 Paige, 538; 3
Paige, 531, 543; Cl. Ch., 482; 10 Wend., 113; 2 N. Y., 131; 6 N. Y., 107; 49 N. Y., 373; 37 N. Y., 454;
2 T. & C., 541; 5 Daly, 497; 16 Hun, 487; id., 311; 60 N. Y., 433; 13 Hun, 126; 17 J. & S., 34; 37
Hun, 389; 91 N. Y., 525.

Months
and days,
how to be
reckoned.

§ 9. For the purpose of calculating interest, a month shall be considered the twelfth part of a year, and as consisting of thirty days; and interest for any number of days, less than a month, shall be estimated by the proportion which such number of days shall bear to thirty.

How inter-
est to be
calculated
in certain
cases.

7 Paige, 600; 6
Paige, 161;
20 Wend., 611; 24
Wend., 380;
3 Hill, 564;
4 Hill, 35,

§ 10. Whenever, in any statute, act, deed, written or verbal contract, or in any public or private instrument whatever, any certain rate of interest is or shall be mentioned, and no period of time is stated for which such rate is to be calculated, interest shall be calculated at the rate mentioned, by the year, in the same manner as if the words "per annum" or "by the year," had been added to such rate.

119, 468, 567; 5 Hill, 523, 547, 608.

L. 1837, Chap. 430 — An act to prevent usury.

[Section 1 amends part 2, ch. 4, title 3, § 5, of the Revised Statutes.]

Plaintiff may be examined. § 2. Whenever in an action at law the defendant shall plead or give notice of the defence of usury, and shall verify the truth of his plea or notice by affidavit, he may, for the purpose of proving the usury, call and examine the plaintiff as a witness, in the same manner as other witnesses may be called and examined.

2 Denio, 159; 6 Hill, 223; 5 Hill, 523, 548, 608; 4 Hill, 35, 567; 3 Hill, 564; 7 Paige, 598.

Offenders may be compelled to answer. § 3. Every person offending against the provisions of the said title, or of this act, may be compelled to answer on oath any bill that shall be exhibited against him, in the court of chancery, for relief, or discovery, or both.

1 E. D. Smith, 7; 6 Paige, 627.

Offer to pay principal and interest. § 4. Whenever any borrower of money, goods or things in action, shall file a bill in chancery for relief or discovery, or both, against any violation of the provisions of the said title or of this act, it shall not be necessary for him to pay or offer to pay any interest or principal on the sum or thing loaned; nor shall any court of chancery require or compel the payment or deposit of the principal sum or interest, or any portion thereof, as a condition of granting relief or compelling or discovering to the borrower in any case, usurious loans forbidden by said title or by this act.

49 N. Y., 373; 37 N. Y., 454; 14 N. Y., 131; 3 N. Y., 499; 1 N. Y., 278; 30 Barb., 627; 14 Barb., 144; 1 Barb., 278; 3 Paige, 528; 7 Hill, 391; 91 N. Y., 535.

Power of court of chancery. § 5. Whenever it shall satisfactorily appear by the admissions of the defendant, or by proof, that any bond, bill, note, assurance, pledge, conveyance, contract, security, or any evidence of debt, has been taken

or received in violation of the provisions of said title or of this act, the court of chancery shall declare the same to be void, and enjoin any prosecution thereon, and order the same to be surrendered and cancelled.

3 N. Y., 499.

[Sections 6, 7 and 8 repealed by L. 1886, ch. 593.]

Repeal. § 9. So much of title third, chapter fourth and part second of the Revised Statutes, as is inconsistent with the provisions of this act, is hereby repealed.

L. 1850, Chap. 172 — An act to prohibit corporations from interposing the defence of usury in any action.

Defence forbidden. SECTION 1. No corporation shall hereafter interpose the defence of usury in any action.

15 N. Y., 9; 17 Barb., 309; 49 N. Y., 635; 4 T. & C., 182; 6 J. & S., 184; 60 N. Y., 612; 63 Barb., 415; 1 Hun, 680; 5 J. & S., 279; 60 N. Y., 533, 612; 74 N. Y., 85; 24 Hun, 281.

Meaning of the terms used. § 2. The term corporation, as used in this act, shall be construed to include all associations, and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships.

4 T. & C., 600.

L. 1879, Chap. 538 — An act to amend title three, chapter four of part second of the Revised Statutes, entitled "Of the interest of money."

[Section 1 amends section 1 of title 3, chapter 4, part 2 of the Revised Statutes, as shown on p. 2512, ante.]

23 Hun, 578.

Repeal. § 2. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

When six per cent interest law took effect. § 3. This act shall take effect on the first day of January, eighteen hundred and eighty.

L. 1882, Chap. 237 — An act in relation to advances of money upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit and other negotiable instruments.

Rate of interest on loans on warehouse receipts, etc. SECTION 1. In any case hereafter in which advances of money, repayable on demand, to an amount not less than five thousand dollars, are made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds or other negotiable instruments pledged as collateral security for such repayment, it shall be lawful to receive or to contract to receive and collect, as compensation for making such advances, any sum to be agreed upon, in writing, by the parties to such transaction.

Repeal. § 2. All acts or parts of acts inconsistent herewith are hereby repealed.

TITLE 4.

TITLE IV.

Of Accumulations of personal Property, and of expectant Estates in such Property.

- Smo.** 1. How long absolute ownership of personal property may be suspended.
 2. Other limitations or future interests, etc., subject to first chapter of this part.
 3. For what periods accumulations of interest, etc., may be directed.
 4. All other directions for accumulation to be void; but in one case, void in part only.
 5. When monies accumulated, etc., may be applied to support, etc., of minor.

Suspension
of owner-
ship of
personal
property.

SECTION I. The absolute ownership of personal property shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance and until the termination of not more than two lives in being at the date of the instrument containing such limitation or condition; or if such instrument be a will, for not more than two lives in being at the death of the testator.

[Act concerning Revised Statutes, passed December 10, 1828, § 15, subd. 31.]

25 N. Y., 69, 83; 29 N. Y., 39, 71; 24 N. Y., 12; 3 T. & C., 197; 41 N. Y., 334; 1 Lans., 254; 3 Lans., 364, 379; 4 Lans., 239; 23 Hun., 223; 1 Hun., 71; 1 Tucker, 79; 1 Redf., 438; 6 N. Y., 322; 13 N. Y., 230; 8 N. Y., 631; 7 N. Y., 242; 33 Barb., 501; 27 Barb., 394; 15 Barb., 145; 10 Barb., 398; 9 Barb., 344; 7 Barb., 326, 566; 4 Barb., 88, 293; 2 Barb., 470; 7 Paige, 521; 4 Paige, 342; 4 Paige, 80; 3 Sandf. Ch., 377; 2 Edw., 496, 561; 24 Wend., 641; 3 Barb. Ch., 355; 34 N. Y., 609; 81 N. Y., 19; 63 N. Y., 192, 198; 43 N. Y., 382, 498; 47 N. Y., 397; 32 W. D., 395; 12 Abb. N. C., 364; 5 Redf., 278, 284; 3 Dem., 18, 126, 369; 25 Hun., 6; 26 Hun., 651; 29 Hun., 20, 296; 27 Hun., 15; 86 N. Y., 92, 823; 89 N. Y., 225; 91 N. Y., 439; 95 N. Y., 403; 96 N. Y., 216; 99 N. Y., 311; 5 Dem., 388, 524.

Certain
other limi-
tations.

1 Lans., 364;
4 id., 339;
5 id., 167; 13
842; 18 How.
9, 19; 43
33 Hun., 96;

§ 2. In all other respects, limitations of future or contingent interests in personal property, shall be subject to the rules prescribed in the first chapter of this act, in relation to future estates in lands.

Accumula-
tions of
interest,
&c.

For what
period
when com-
mencing
from date
of instru-
ment, &c.

[774]

For what
period
when com-
mencing
subsequent
to date of
instru-
ment, &c.

§ 3. An accumulation of the interest of money, the produce of stock or other income or profits arising from personal property, may be directed by any instrument sufficient in law to pass such personal property as follows:

1. If the accumulation be directed to commence from the date of the instrument, or from the death of the person executing the same, such accumulation must be directed to be made for the benefit of one or more minors then in being, or in being at such death, and to terminate at the expiration of their minority;

2. If the accumulation be directed to commence at any period subsequent to the date of the instrument, or subsequent to the death of the person executing such instrument, it must be directed to commence within the time allowed in the first section of this title, for the suspension of the absolute ownership of personal property, and at some time during the minority of the persons for whose benefit it is intended, and must terminate at the expiration of their minority.

3 T. & C., 198; 15 N. Y., 325; 8 N. Y., 531; 7 N. Y., 257; 31 Barb., 63; 30 Barb., 128; 15 Barb., 139; 2 Barb., 248; 3 Barb. Ch., 92; 5 Paige, 480; 4 Paige, 323; 2 Sandf. Ch., 474; 16 How. Pr. R., 352; 2 Barb. Ch., 518; 1 Hun., 73; 1 Tucker, 485; 3 Redf., 233; 23 Hun., 223; 64 N. Y., 651; 4 Abb. N. C., 368; 51 How. Pr. R., 276; 70 N. Y., 573; 1 Dem., 114, 404; 2 Dem., 141; 24 Hun., 1; 26 Hun., 89; 28 Hun., 616; 29 Hun., 20; 93 N. Y., 508; 95 N. Y., 18.

When
other di-
rections
wholly

§ 4. All directions for the accumulation of the interest, income or profit of personal property, other than such as are herein allowed,

shall be void; but a direction for an accumulation, in either of the cases specified in the last section, for a longer term than the minority of the persons intended to be benefited thereby, shall be void only as respects the time beyond such minority.

TITLE 4.
void.
When void
in part.
15 N. Y.,
322; 1 Tuck-
er, 485; 4
Barb., 283;
257; 8 N. Y.,
Hun, 20.

7 Barb., 236, 590; 30 Barb., 123; 3 Barb. Ch., 92; 5 Paige, 480; 8 Paige, 123; 7 N. Y., 538; 16 N. Y., 322; 28 Hun, 615; 29

§ 5. When any minor, for whose benefit a valid accumulation of the interest or income of personal property shall have been directed, shall be destitute of other sufficient means of support or of education, the chancellor, upon the application of such minor or his guardian, may cause a suitable sum to be taken from the monies accumulated or directed to be accumulated, and to be applied to the support or education of such minor.

When part
may be
taken for
education,
&c., of
minor.
8 N. Y., 538.

[Supplementary Title.]

TITLE 4^A.

Other Provisions relating to personal Property.

- ART. 1.—Certain property declared to be personal.
ART. 2.—Factors, agents and other custodians of personal property.
ART. 3.—Unclaimed baggage and other goods.
ART. 4.—Conditional sales of personal property.

ARTICLE FIRST.

CERTAIN PROPERTY DECLARED TO BE PERSONAL.

L. 1833, Chap. 372—An act in relation to oil wells, fixtures and oil leases.

To be deemed personal property. SECTION 1. All oil wells and all fixtures connected therewith, situate on lands leased for oil purposes and oil interests, and rights held under and by virtue of any lease or contract or other right or license to operate for or produce petroleum oil, shall be deemed personal property for all purposes except taxation, but nothing herein contained shall affect the laws now in force relating to taxation.

35 Hun, 173.

§ 2. This act shall take effect immediately.

ARTICLE SECOND.

FACTORS, AGENTS, AND OTHER CUSTODIANS OF PERSONAL PROPERTY.

L. 1830, Chap. 179—An act for the amendment of the law relative to principals and factors or agents.

Lien on merchandise. SECTION 1. After this act shall take effect, every person in whose name any merchandise shall be shipped, shall be deemed the true owner thereof, so far as to entitle the consignee of such merchandise to a lien thereon,

1. For any money advanced, or negotiable security given by such consignee, to or for the use of the person in whose name such shipment shall have been made; and,

2. For any money or negotiable security received by the person in whose name such shipment shall have been made, to or for the use of such consignee.

4 Denio, 329; 6 N. Y., 374, 380; 18 Hun, 277; 6 Lans., 403; 55 N. Y., 294; 60 N. Y., 73; id., 40; 4 Daly, 256; 24 N. Y., 521, 638; 28 Barb., 178; 20 Wend., 9; 10 Wend., 439; 56 N. Y., 544; 5 Robt., 418.

When to exist. § 2. The lien provided for in the preceding section, shall not exist where such consignee shall have notice, by the bill of lading or otherwise, at or before the advancing of any money or security by him, or at or before the receiving of such money or security by the person in whose name the shipment shall have been made, that such person is not the actual and *bona fide* owner thereof.

28 Barb., 178; 6 N. Y., 874.

In what case the factor or agent is deemed the true owner. § 3. Every factor or other agent, entrusted with the possession of any bill of lading, custom-house permit, or warehouse-keeper's receipt for the delivery of any such merchandise, and every such factor or agent not having the documentary evidence of title, who shall be entrusted with the possession of any merchandise for the purpose of sale, or as a security for any advances to be made or obtained thereon, shall be deemed to be the true owner thereof, so far as to give validity to any contract made by such agent with any other person, for the sale or disposition of the whole or any part of such merchandise, for any money advanced, or negotiable instrument or other obligation in writing given by such other person upon the faith thereof.

1 Sweeny, 436; 1 Hun, 196; 3 T. & C., 693; 6 N. Y., 874; 3 Denio, 472; 1 E. D. Smith, 7; 4 Denio, 323; 45 N. Y., 620; 1 Bosw., 504; 7 Daly, 233; 18 Hun, 387; 16 Abb. Pr., N. S., 411; 71 N. Y., 353; 10 J. & S., 522; 60 N. Y., 40; *id.*, 73; 61 N. Y., 263; 19 Hun, 21; 18 Hun, 277; 74 N. Y., 568; *id.*, 587; 34 Hun, 534; 106 N. Y., 203.

Right in case of deposit. § 4. Every person who shall hereafter accept or take any such merchandise in deposit from any such agent, as a security for any antecedent debt or demand, shall not acquire thereby, or enforce any right or interest in or to such merchandise or document, other than was possessed or might have been enforced by such agent at the time of such deposit.

3 Denio, 472.

Rights of the true owner of merchandise. § 5. Nothing contained in the two last preceding sections of this act, shall be construed to prevent the true owner of any merchandise so deposited, from demanding or receiving the same, upon repayment of the money advanced, or on restoration of the security given, on the deposit of such merchandise, and upon satisfying such lien as may exist thereon in favor of the agent who may have deposited the same; nor from recovering any balance which may remain in the hands of the person with whom such merchandise shall have been deposited, as the produce of the sale thereof, after satisfying the amount justly due to such person by reason of such deposit.

• 6 N. Y., 374.

Common carrier. § 6. Nothing contained in this act shall authorize a common carrier, warehouse-keeper, or other person to whom merchandise or other property may be committed for transportation or storage only, to sell or hypothecate the same.

1 Bosw., 505; 102 N. Y., 120.

[Section 7 repealed by L. 1886, ch. 593.]

Powers of the court of chancery. § 8. Nothing contained in the last preceding section, shall be construed to prevent the court of chancery from compelling discovery, or granting relief upon any bill to be filed in that court by the owner of any merchandise so entrusted or consigned, against the factor or agent by whom such merchandise shall have been applied or sold contrary to the provisions of the said section, or against any person who shall have been knowingly a party to such fraudulent application or sale thereof; but no answer to any such bill shall be read in evidence against the defendant making the same, on the trial of any indictment for the fraud charged in the bill.

L. 1835, Chap. 526 — An act to establish and define the lien of warehousemen.

Warehousemen to have lien for storage charges, etc. SECTION 1. A warehouseman or person lawfully engaged exclusively in the business of storing goods, wares and merchandise for hire shall have a lien for his storage charges, for moneys advanced by him for cartage, labor, weighing and coopering paid on goods deposited and stored with him, and such lien shall extend to and include all legal demands for storage and said above described expenses paid which he may have against the owner of said goods; and it shall be lawful for him to detain said goods until such lien is paid.

ARTICLE THIRD.**UNCLAIMED BAGGAGE AND OTHER GOODS.****L. 1837, Chap. 300 — An act relative to unclaimed trunks and baggage.**

Description to be entered in a book. SECTION 1. The proprietor or proprietors of the several lines of stages, and the proprietors of the several canal boat lines, and the proprietors of the several steamboats, and the several incorporated railroad companies, and the keepers of the several inns and taverns within this state, who shall have any unclaimed trunks, boxes or baggage within his, their or either of their custody, shall immediately enter the time the same was left, with a proper description thereof, in a book to be by them provided and kept for that purpose. In case the name and residence of the owner shall be ascertained, it shall be the duty of such person who shall have any such property as above specified, to immediately notify the owner thereof by mail.

45 N. Y., 158.

Description of property to be made and published. § 2. In case there shall not be any information obtained as to the owner, it shall be the duty of the person having the possession thereof, to make out a correct written description of all such property as shall have been unclaimed for thirty days, stating the time the same came into his possession, and forward said description to the editor of the state paper, whose duty it shall be, on the first Mondays of July, October, January and April in each year, to publish the same in the state paper once a week for three weeks successively.

If not claimed for sixty days to be opened and inventory to be made; when to be sold at auction. § 3. In case the said property shall remain unclaimed for sixty days after the said publication, it shall be the duty of the person or company having possession thereof, to apply to a magistrate of the town or city in which said property is retained, in whose presence and under whose direction said property shall be opened and examined, and an inventory thereof taken by said magistrate; and if the name and residence of the owner is ascertained by such examination, it shall be the duty of the magistrate forthwith to direct a notice thereof to such owner, by mail; and if said property shall remain unclaimed for three months after such examination, it shall be the further duty of the person or company having possession thereof to apply to a magistrate as aforesaid; and if said magistrate shall deem such property of sufficient value, he shall cause the same to be sold at public auction, giving six days' previous notice of the time and place of such sale; and from the proceeds of such sale he shall pay the charges and expenses legally incurred in respect to said property, or a ratable proportion thereof to each claimant, if insufficient for the payment of the whole amount; and the balance of the proceeds of such sale, if any, the said magistrate shall immediately pay to the overseers of the poor of said town or city, for the use of the poor thereof; and the said overseers shall make an entry of such amount, and the time of receiving the same, upon their official records, and it shall be subject, at any time within seven years thereafter, to be reclaimed by, and refunded to, the owner of such property his heirs or assigns, on satisfactory proof of such ownership.

Expense to be a lien on property. § 4. The person making the entry of unclaimed property as above specified, shall be entitled to twelve and a half cents for each trunk, box, bale, package or bundle so entered, and shall have a lien on the property so entered, until payment shall be made; and in case any additional expense shall be incurred for printing, the lien shall continue until payment shall be made for such additional expense.

Penalty. § 5. In case any person shall neglect or refuse to comply with the provisions of this act, he shall forfeit the sum of five dollars for each and every trunk, box or bundle of baggage so neglected as above specified, to the benefit of any person who shall sue for the same, in his own name, in an action of debt in any court having cognizance thereof.

L. 1855, Chap. 523 —An act in regard to unclaimed express freight.

Express companies may sell unclaimed articles. SECTION 4. Every express company, or person or persons, engaged in the express business, who shall have had any unclaimed article, goods, or things, not perishable, in its, his, or their possession, for a period of one year at least, may proceed to sell the same at public auction, and out of the proceeds may retain the charges of transportation and storage of such article, goods or thing, and the expenses of advertising and sale thereof; but no such sale shall be made, until the expiration of four weeks from the first publication of notice of such sale, in a newspaper published at or nearest the place at which such article, goods, or thing, was directed to be left, and also at the place where such sale is to take place; and said notice shall contain a description of such article, goods, or thing, the place at which the same was to be left, as near as may be, together with the name of the person to whom directed, if known; and the expenses incurred for advertising shall be a lien upon such article, goods, or thing, in a ratable proportion, according to the value of each article, package or parcel, if more than one.

In case of perishable articles. § 2. In case such unclaimed article, goods, or thing, shall in its nature be perishable, the same may be sold as soon as it can be, on giving the notice required in the preceding section, after its receipt at the city, town, or village, to which it was directed.

Must keep an account and refund the owner. § 3. Such express company, or person or persons engaged in the express business, shall make an entry of the balance of the proceeds of the sale, if any, of each article, goods or thing directed to the same person, as near as can be ascertained, and at any time within five years thereafter, shall refund any surplus so retained to the owner of such article, goods, or thing, his heirs or assigns, on satisfactory proof of such ownership.

Or pay to county treasurer. § 4. In case such balance shall not be claimed by the rightful owner within five years after the sale as above specified, then it shall be paid to the county treasurer, for the use of the county poor of said county.

L. 1879, Chap. 336 —An act to enable storage warehousemen to collect their charges upon goods deposited with them by the sale thereof.

When may sell property to pay charges; notice. SECTION 1. Every warehouse company, or person or persons, engaged in the warehouse business, who shall have had in his or their possession any goods, wares, or merchandise by virtue of any agreement or warehouse receipt for the storage of the same on which or any part thereof there may be due one year's storage, may proceed to sell the same at public auction, and out of the proceeds may retain the charges for storage of said goods, wares, and merchandise, and any advances that may have been made thereon by him or them, and the expense of advertising and sale thereof; but no

such sale shall be made until after the giving of a printed or written notice of such sale, to the person or persons in whose name or names such goods, wares and merchandise were stored, requiring him, her or them, naming them, to pay the arrears or amount due for such storage, and in case of default in so doing, that such goods, wares and merchandise will be sold to pay the same, at a time and place to be specified in such notice. [*Thus amended by L. 1883, ch. 421.*]

Notice, how served. § 2. The notice required by the last preceding section shall be served personally, at least four weeks before the time of such sale upon the party storing the goods, providing such service can be made with reasonable diligence within the state of New York. If the party storing such goods cannot with reasonable diligence be found within the state of New York, then such notice shall be given by publication once in each week for six successive weeks, before the time of such sale in a newspaper published at or nearest the place, where such sale is to take place. In the event that the party storing such goods or merchandise shall have parted with the same, and the purchaser shall have notified the warehouseman with his address, such notice shall be given to such person in lieu of the person storing the goods.

Surplus of proceeds, how disposed of. § 3. Such warehouse company, or person or persons, engaged in the warehouse business, shall make an entry in a book kept for that purpose of the balance or surplus of the proceeds of the sale, if any, and such balance or surplus shall be paid over to such person or persons entitled thereto within thirty days after such sale and after the expiration of said thirty days, such balance or surplus shall be paid by such warehouse company, or person or persons, engaged in the warehouse business to the county treasurer; or if in the city of New York to the chamberlain of said city, for the use of the poor, unless called for or claimed by the rightful owner within five years after the receipt thereof, and shall at the same time file with said treasurer or chamberlain an affidavit in which shall be stated the name and place of residence, so far as the same are known of the person whose goods or merchandise have been sold, the articles sold, and the prices at which they were sold, the name and residence of the auctioneer making the sale, together with a copy of the notice published and how served, whether by personal service or by mailing, and if not so served, the reason therefor.

ARTICLE FOURTH.

CONDITIONAL SALES OF PERSONAL PROPERTY.

L. 1883, Chap. 383—An act entitled “An act relating to certain contracts for the lease or conditional sale of railroad equipment and rolling stock and providing for the record thereof.”

Conditional sale required to be evidenced in writing, recorded, etc. SECTION 1. Whenever any railroad equipment and rolling stock shall hereafter be sold, leased or loaned on the condition that the title to the same, notwithstanding the possession and use of the same by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor, until the terms of the contract as to the payment of the instalments, amounts or rentals payable, or the performance of other obligations thereunder shall have been fully complied with, but also providing that title thereto shall pass to the vendee, lessee or bailee on full payment therefor as aforesaid, such contract shall be invalid as to any subsequent judgment creditor or any subsequent purchaser for a valuable consideration without notice, unless

1. The same shall be evidenced by writing, duly acknowledged before some person authorized by law to take acknowledgments of deeds.

2. Such writing shall be recorded in the same book as mortgages are recorded, in the office of the clerk of the county in which is located the principal office or place of business of such vendee, lessee or bailee within the state, or in the office of the register in counties where there is a register's office.

3. Each locomotive or car so sold, leased or loaned, shall have the name of the vendor, lessor or bailor, or the assignee of such vendor, lessor or bailor, plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

This act how applicable to former contracts. § 2. This act shall not be held to apply to or invalidate any contract heretofore made, of the character described in the first section, but the same shall be and remain valid if recorded within ninety days from the date hereof.

L. 1884, Chap. 315—An act requiring contracts for the conditional sale of personal property on credit to be filed in the town clerks' and other offices.

Contracts for conditional sales to be void if not filed. SECTION 1. In every contract for the conditional sale of goods and chattels hereafter made which shall be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the things contracted to be sold, all conditions and reservations which provide that the ownership of such goods and chattels is to remain in the person so contracting to sell the same or other person than the one so contracting to buy them until said goods or chattels are paid for, or until the occurring of any future event or contingency shall be absolutely void as against subsequent purchasers and mortgagees in good faith, and as to them the sale shall be deemed absolute, unless such contract for sale with such conditions and reservations therein, or a true copy thereof shall be filed as directed in the succeeding section of this act.

13 Daly, 247.

Where to be filed. § 2. The instruments mentioned in the preceding section shall be filed in the several towns and cities of this state, where the person to whom such property is so contracted to be sold, if a resident of this state, shall reside at the time of the execution thereof; and if not a resident, then in the city or town where the property so contracted to be sold shall be at the time of the execution of such instrument. In the city of New York such instrument shall be filed in the office of the register of the city, and, in the county of Kings, in the office of the register of said county. In the several cities of this state, other than the cities of New York and Brooklyn, and in the several towns of this state in which a county clerk's office is kept, in such office; and in each of the other towns in this state, in the office of the town clerk thereof. If the conditional vendee be a railroad corporation, the instrument mentioned in the preceding section shall be filed in the office of the clerk of each county through which its railroad is located, or, in counties where there is a register, in the office of the register, and such filing shall be deemed sufficient for all the purposes of this act. Such registers and clerks are hereby required to file all such instruments aforesaid, presented to them respectively for that purpose, and to indorse thereon the time of receiving the same, and shall deposit the same in their respective offices, to be kept there for the inspection of all persons interested. [*Thus amended by L. 1885, ch. 488.*]

22 W. D., 109; 43 Hun, 58.

To cease to be valid after one year, unless copy and statement is filed. § 3. The conditions and reservations specified in the first section of this act which may be in any instrument filed in pursuance of this act shall cease to be valid against subsequent purchasers or mortgagees in good faith after the expiration of one year from the filing of such instrument, and as to them the sale shall then be deemed absolute, unless, within thirty days next preceding the expiration of each and every term of one year after the filing of such instrument a true copy of such instrument together with a statement exhibiting the interest of the person so contracting to sell such property, in the property thereby claimed by him by virtue thereof, shall be again filed in the office of the clerk or register aforesaid of the

town or city where the person to whom such property is so contracted to be sold shall then reside, if such person shall then be a resident of this state; and if not such resident, then in the office of the clerk or register of the town or city where the property so contracted to be sold was at the time of the execution of such instrument.

Duty of clerks; fees. § 4. The clerks of the several towns and counties of this state in whose offices contracts for the conditional sale of goods and chattels on credit are by this act required to be filed shall indorse on every such instrument or copy so filed the number thereof and enter such number and the names of all parties to such instrument and the amount thereby required to be paid and the future contingency or event required to occur before the ownership of the goods and chattels described therein shall pass from the person contracting to sell the same, the time when such amount will be due and the date of the filing of such instrument or copy, in the books kept in such offices for the entry of similar matters regarding mortgages of goods and chattels and in like manner as in cases where such mortgages are so filed, except that the name of the person in such instrument contracting to sell shall be entered in the column of mortgagees and the name of the person therein contracting to buy shall be entered in the column of mortgagors. For their services under this act such clerks shall receive the same fees they are now authorized to receive for like services in regard to mortgages of goods and chattels.

How discharged of record. § 5. A contract for the conditional sale of goods and chattels on credit filed as required by this act may be satisfied and discharged of record in the same manner, so far as is applicable, as may mortgages of goods and chattels which may now be filed in the offices of town or county clerks.

Past transactions not affected. § 6. This act shall not affect any proceeding now pending nor any transaction had before the passage of this act.

Act not to apply to household goods and certain other articles; proviso; rights of purchaser of such articles after seizure; not to apply to railroad equipments, etc. § 7. This act shall not apply to household goods, pianos, organs, scales, engines and boilers, portable saw-mills and saw-machines, threshing machines and horse-powers, mowing machines, reapers and harvesters and grain drills with their attachments; provided that the contract for the sale of the same be executed in duplicate, and one duplicate shall be delivered to the purchaser. In case household goods, pianos, organs, scales, engines and boilers, portable saw-mills and saw-machines, threshing machines and horse-powers, mowing machines, reapers and harvesters and grain drills, with the attachments are sold upon the condition that the title shall remain in the vendor, or some other person than the purchaser, until the payment of the purchase price, or until the occurring of any future event or contingency, and the same are retaken by the vendor or his successor in interest, such property so retaken shall be retained for thirty days by the person by whom or on whose behalf the same has been so taken, during which time the purchaser or his successor in interest may fulfil such contract or purchase, and shall be entitled thereupon to receive such property. After the expiration of such time, all interest of the purchaser or his successor in interest in such property lawfully retaken under such contract shall cease. This act shall not apply to railroad equipment or rolling-stock sold, leased or loaned, under a contract which has been or must be recorded pursuant to the provisions of chapter three hundred and eighty-three of the laws of eighteen hundred and eighty-three, entitled "An act relating to certain contracts for the lease or conditional sale of railroad equipment and rolling-stock, and providing for the record thereof." [Thus amended by L. 1888, ch. 225, superseding L. 1885, ch. 488, and L. 1886, ch. 495.]

TITLE I.

CHAPTER V.

OF TITLE TO PROPERTY, REAL AND PERSONAL, TRANSMITTED OR ACQUIRED BY SPECIAL PROVISIONS OF LAW.

TITLE I.—OF THE ASSIGNMENT OF THE ESTATES OF NON-RESIDENT, ABSCONDING, INSOLVENT, OR IMPRISONED DEBTORS.

[Supplementary Title.]

TITLE 1^A.—Of voluntary assignments by a debtor, for the benefit of his creditors.]

TITLE II.—OF THE CUSTODY AND DISPOSITION OF THE ESTATES OF IDIOTS, LUNATICS, PERSONS OF UNSOUND MIND, AND DRUNKARDS.

[Vol. 2,
1-39]

TITLE I.

Of the Assignment of the Estates of non-resident, absconding, insolvent, or imprisoned Debtors.

- ART. 1. — Of attachments against absconding, concealed and non-resident debtors.
[Repealed by L. 1877, ch. 417, and L. 1880, ch. 245.]
- ART. 2. — Of attachments against debtors confined for crimes.
[Repealed by L. 1880, ch. 245.]
- ART. 3. — Of voluntary assignments, made pursuant to the application of an insolvent and his creditors.
[Repealed by L. 1880, ch. 245.]
- ART. 4. — Of proceedings by creditors, to compel assignments by debtors imprisoned on execution in civil causes.
[Repealed by L. 1880, ch. 245.]
- ART. 5. — Of voluntary assignments by an insolvent, for the purpose of exonerating his person from imprisonment.
[Repealed by L. 1880, ch. 245.]
- ART. 6. — Of voluntary assignments by a debtor imprisoned in execution in civil causes.
[Repealed by L. 1877, ch. 417 and L. 1880, ch. 245.]
- ART. 7. — General provisions applicable to proceedings under the several preceding articles, or some of them.
[Repealed by L. 1880, ch. 245.]
- ART. 8. — Of the powers, duties and obligations of trustees and assignees under this title.

ARTICLE EIGHTH.

OF THE POWERS, DUTIES AND OBLIGATIONS OF TRUSTEES AND ASSIGNEES UNDER THIS TITLE.

- SEC. 1. Assignees and trustees appointed under preceding articles declared trustees, etc.
2. If there be only one, provisions having reference to several, to apply.
 3. Powers of trustees where there are more than one.
 4. Powers of survivor. Property in the hands of trustee dying, etc., provided for.
 5. Trustees to take oath; oath to be filed, and where.
 6. Trustees to be deemed vested with debtor's property, and from what time.
 7. Powers of trustees.
 8. Trustees to give notice requiring debtors to pay, etc.
 9. Time and manner of publishing such notice.
 10. Trustees may sue before day of payment, etc., named in notice.

- 3mc. 11. Persons concealing property or debts, to forfeit double the amount, etc. ART. 8.
 12. Debtor, etc., charged with concealing estate, may be brought up by warrant.
 13. Person brought up to be examined; examination to be reduced to writing, etc.
 14. If he refuse to be sworn, etc., officer to commit him, and how.
 15. Proceedings in case such person shall bring a *habeas corpus*.
 16. Sheriff, etc., suffering such person to escape, to be indicted, and to forfeit \$2,500.
 17. Persons examined and answering, not liable to penalty; answers how far evidence.
 18. Persons discovering concealed property, entitled to ten per cent.
 19. Controversies between trustees and others, may be referred to three referees.
 20. If referees be not agreed on, trustees to give notice of application, etc.
 21 & 22. Referees how to be selected.
 23. Selection to be certified to clerk of court, and rule to be entered.
 24. Referees to have same powers, etc., as referees appointed by supreme court.
 25. Report of referees, where to be filed; conclusive if not set aside.
 26. Trustees to convert estate into money; to keep account, etc.
 27. Trustees within fifteen months, to call a general meeting of the creditors, etc.
 28. Accounts to be adjusted, and amount of monies in hand declared.
 29. Trustees to deduct disbursements and a commission of five per cent.
 30 & 31. Duty of trustees under article first, where bonds to retain property for the benefit of creditors, have been executed.
 32. United States and sureties having a preference by laws of United States to be first paid.
 33. Manner in which remainder is to be distributed among creditors.
 34. Debts due as guardian, etc., to be first paid on such distribution.
 35. Creditors whose debts are not due, to receive their proportion, deducting interest.
 36. Mutual credits and mutual debts, when set off, etc.
 37. Set-offs of demands purchased, etc., regulated.
 38. Trustees may retain monies in their hands to meet demands in suits pending.
 39. Penalties recovered by trustees to be deemed part of debtor's estate, etc.
 40. If whole estate be not distributed, yearly dividends to be made, etc.
 41. Creditors omitting to deliver accounts on first dividend, etc., provided for.
 42. Dividends unclaimed for one year, deemed relinquished, and to be distributed.
 43. Surplus remaining after settlement of estate, to be paid to debtor.
 44. Certain debtors discharged under 3d, 4th and 5th articles, entitled to allowance, etc.
 45. Trustees to render account on oath; where filed; its contents, etc.
 46. Trustees subject to order of certain courts; removable for cause shown.
 47. Proceedings in common pleas, under this title, removable into supreme court, etc.
 48. If trustee be removed or die, etc., new trustee may be appointed.
 49. Trustee wishing to renounce, may apply for order to show cause, etc.
 50. If officer who appointed is not in office, application to whom made.
 51. Application to be accompanied by account of trustee's transactions, etc.
 52. Affidavit of trustee to be annexed to account.
 53. Order to be granted directing notice to persons interested to shew cause.
 54. Notice to be published, how and for what time.
 55. On the day appointed, etc., proofs and allegations to be heard.
 56. When order may be granted allowing trustee to renounce, etc.
 57. Trustee to execute assignment to such person as shall be appointed, etc.
 58. Effect of such assignment; powers and duties of new assignee.
 59. On certificate of assignment, etc., order to be granted discharging trustee.
 60. Trustee thereupon discharged from his trust, subject to liabilities previously incurred.
 61. New assignment where to be recorded; petition and proceedings where filed.
 62. Expenses of proceedings to be paid by trustees renouncing.

SECTION I. All assignees and trustees, appointed under any authority, conferred by any of the provisions of the preceding articles of this title, in the several cases therein contemplated, are hereby declared to be trustees of the estate of the debtor, in relation to whose property they shall be appointed, for the benefit of his creditors; and shall be vested with all the powers and authority

Assignees,
&c., trust-
ees for the
benefit of
creditors.
23 Wend.,
87; 7 How.
Pr. R., 335.

TITLE 1.

herein after specified, and shall be subject to the control, obligations and responsibilities herein after declared, in respect to trustees.

[41]
One trustee, &c.

§ 2. When any one assignee or trustee only, shall be appointed, all the provisions herein contained, in reference to several trustees, shall apply to him.

Powers of trustees where more than one.

§ 3. When there are more trustees than one appointed, the debts and property of the debtor may be collected and received by any one of them; and when there are more than two trustees appointed, every power and authority conferred by this title on the trustees, may be exercised by any two of them.

Survivor.

Property in hands of trustee dying.

§ 4. The survivor or survivors of any trustees, shall have all the powers and rights given by this title to trustees. All property in the hands of any trustee at the time of his death, removal or incapacity, shall be delivered to the remaining trustee or trustees, if there be any; or to the successor of the one so dying, removed or incapacitated; who may demand and sue for the same.

[See L. 1846, ch. 158, *post*, p. 3586.]

Trustees to take oath.
35 N. Y., 474; 11 Abb. N. S., 403; 43 How. Pr. R., 237.

§ 5. Before proceeding to the discharge of any of their duties, all such trustees shall take and subscribe an oath, that they will well and truly execute the trust by their appointment reposed in them, according to the best of their skill and understanding; which oath shall be filed with the officer or court, that appointed them.

[1 R. L., 159, § 8.]

Trustees vested with debtor's property.
13 N. Y., 41, 615; 23 Wend., 87; 21 Wend., 317; 15 Wend., 248; 43 How. Pr. R., 227; 11 Abb. N. S., 402; 3 How. Pr., N. S., 285.

§ 6. The trustees taking such oath, shall be deemed vested with all the estate, real and personal, of such debtor (except such as is exempted by the preceding articles), as follows:

1. In proceedings under the first article of this title, from the first publication of the notice to the non-resident, absconding or concealed debtor:

2. In proceedings, under the second article, from the appointment of trustees:

3. In proceedings under the third, fifth and sixth articles, from the execution of the assignment, in those articles directed:

4. In proceedings under the fourth article, when the assignment was voluntary, from the time of its execution; when executed by an officer as therein directed, from the time of the first publication of the notice in that article required to be given to creditors.

[1 R. L., 159, § 10; 462, § 5; L. 1819, 44, § 4.]

Their powers.
3 Abb. Ct. App. Dec., 234, 10 Bosw., 19; 5 Robt., 364; 8 Bosw., 636; 18 N. Y., 213; 15 N. Y., 41; 26 Barb., 314; 4 Hill, 115; [43] 4 Denio, 82; 7 Paige, 137; 31 Wend., 317; 7 Wend., 501; 55 Barb., 209.

§ 7. The said trustees shall have power,

1. To sue in their own names or otherwise, and recover all the estate, debts and things in action, belonging or due to such debtor, in the same manner and with the like effect as such debtor might or could have done if no attachment had been issued, or trustees appointed, or an assignment had not been made; and no set-off shall be allowed in any such suit, for any debt, unless it was owing to such creditor, by such debtor, before the first publication of the notice required in the first article, or before the appointment of trustees under the second article, or before presenting the petition of the insolvent under the third, fifth and sixth articles, or before the publication of notice to creditors under the fourth article. But no suit in equity shall be brought by assignees of insolvents under the third.

fourth and fifth articles, without the consent of the creditors having a major part of the debts which shall have been exhibited and allowed, unless the sum in controversy exceeds five hundred dollars: ART. 8.

2. To take into their hands, all the estate of such debtor, whether attached, or delivered to them, or afterwards discovered; and all books, vouchers and securities relating to the same:

3. In the case of a non-resident, absconding or concealed debtor, to demand and receive of every sheriff who shall have attached any of the property of such debtor, or who shall have in his hands, any monies arising from the sale of such property, all such property and monies, on paying him his reasonable costs and charges, for attaching and keeping the same, to be allowed by the officer having jurisdiction:

4. From time to time, to sell at public auction, all the estate, real and personal, vested in them, which shall come to their hands, after giving at least fourteen days' public notice of the time and place of sale, and also publishing the same for two weeks in a newspaper, printed in the county, where the sale shall be made, if there be one:

5. To allow such credit on the sale of real property by them, as they shall deem reasonable, not exceeding eighteen months, for not more than three-fourths of the purchase money; which credit shall be secured by a bond of the purchaser, and a mortgage on the property sold:

6. On such sales, to execute the necessary conveyances and bills of sale:

7. To redeem all mortgages and conditional contracts and all pledges of personal property, and to satisfy any judgments, which may be an incumbrance on any property so sold by them; or to sell such property subject to such mortgages, contracts, pledges or judgments.

8. To settle all matters and accounts between such debtor, and his debtors, or creditors, and to examine any person touching such matters and accounts, on oath, to be administered by either of them:

9. Under the order of the officer appointing them, to compound with any person indebted to such debtor, and thereupon to discharge all demands against such person.

[1 R. L., 159, § 10; 161, § 15; 352, § 8; 468, § 19, to 470, § 23.]

§ 8. The trustees, immediately upon their appointment, shall give notice thereof; and therein shall require,

Notice to
be given.
3 Abb. Ct.
App. Dec.,
234.

1. All persons indebted to such debtor, by a day and at a place therein to be specified, to render an account of all debts and sums of money owing by them respectively, to such trustees, and to pay the same:

[43]

2. All persons having in their possession any property or effects of such debtor, to deliver the same to the said trustees by the day so appointed:

3. All the creditors of such debtor to deliver their respective accounts and demands to the trustees or one of them, by a day to be therein specified, not less than forty days from the first publication of such notice.

[1 R. L., 159, § 9.]

TITLE 1.

Time and manner of publishing notice.
6 Bosw., 688.

May sue notwithstanding notice.

Persons concealing property or debts to forfeit double, etc.

When debtor, etc., may be brought up to be examined.
1 N. Y., 335; 1 Barb., 148.

Particulars of examination.

[44]

Person refusing to be sworn, etc., to be committed.

§ 9. In the case of an insolvent or imprisoned debtor, such notice shall be published for at least three weeks in a newspaper printed in the county where application was made; and in the case of non-resident, absconding or concealed debtors, it shall be published, for the same time, in the newspapers in which the notice of an attachment having issued, is directed to be printed.

§ 10. Notwithstanding any such notice, the trustees may sue for and recover, any property or effects of the debtor, and any debts due to him, at any time, before the day appointed for the delivery or payment thereof.

§ 11. Every person indebted to such debtor, or having the possession or custody of any property or thing in action, belonging to him, who shall conceal the same, and not deliver a just and true account of such indebtedness, or not deliver such property or thing in action, to the trustees or one of them, by the day for that purpose appointed, shall forfeit double the amount of such debt, or double the value of such property so concealed; which penalties may be recovered by the trustees.

[1 R. L., 160, § 11; 466, § 14.]

§ 12. Whenever the trustees shall show by their own oath or other competent proof, to the satisfaction of any officer named in the first section of the seventh article of this title, or of any judge of a county court, that there is good reason to believe that the debtor, his wife, or any other person has concealed or embezzled any part of the estate of such debtor vested in the said trustees; or that any person can testify concerning the concealment or embezzlement thereof; or that any person who shall not have rendered an account as above required, is indebted to such debtor, or has property in his custody or possession, belonging to such debtor; such officer or judge shall issue a warrant, commanding any sheriff or constable to cause such debtor, his wife, or other person, to be brought before him at such time and place as he shall appoint for the purpose of being examined.

[1 R. L., 160, § 12; 467, § 16.]

§ 13. The officer issuing such warrant, shall examine every person so brought before him, on oath, in the presence of the trustees or any of them, touching all matters relative to the debtor, his dealings and estate, and touching the detention or concealment of any part of his property, and touching the indebtedness of any person to such debtor; and shall reduce the examination to writing; which the person so examined is hereby required to sign, and which shall be attested by the officer.

[The same.]

§ 14. If any person so brought before such officer shall refuse to be sworn, or to answer satisfactorily, all lawful questions put to him, or shall refuse to sign the examination, not having a reasonable objection thereto, to be allowed by such officer, the said officer shall by warrant commit such person to prison, there to remain without bail, until he shall submit to be sworn or to answer as required, or to sign such examination; in which warrant, the particular default of the person committed shall be specified; and if it be, in

not answering any question, such question shall also be specified therein. ART. 8.

[The same.]

§ 15. If any person so committed shall bring a writ of *habeas corpus*, he shall not be discharged by reason of any insufficiency in the form of the warrant of commitment; but the court or officer before whom such person shall be brought, shall recommit such person, unless it shall be made to appear that he hath answered all lawful questions put to him, or had sufficient reason for refusing to sign the examination, as the case may be; or unless such person shall then answer, on oath, the questions so put to him.

Proceedings in case he brings *habeas corpus*.

[1 R. L., 160, § 12; 467, § 16.]

§ 16. Any sheriff or jailor wilfully suffering any person so committed or re-committed, pursuant to the foregoing sections, to escape, shall be liable to indictment for a misdemeanor; and on conviction thereof, in addition to any other punishment the court may inflict, shall forfeit to the trustees a sum equal to the whole amount of debts due to the creditors of such debtor, not exceeding two thousand five hundred dollars.

Sheriffs suffering such person to escape, how punished.

[1 R. L., 160, § 12; 467, § 16.]

§ 17. The person so examined, and answering to the satisfaction of the officer, shall not be liable to any penalty imposed in this article for concealing and not delivering any property, or paying any debt; but his answers on such examination, may be given in evidence in the same manner, and with the like effect, as if they had been made in answer to a bill in equity filed by such trustees.

Persons answering not liable to penalty, &c.

§ 18. Any person who shall discover to the trustees any secreted effects, property, or things in action, belonging to such debtor, so that they shall be recovered by them, shall be entitled to ten dollars on the hundred dollars, and at that rate, on the value of the effects so discovered, to be paid by the trustees, out of the estate of such debtor; but this section shall not extend to persons who have such property, effects or things, in their own possession.

Persons discovering effects entitled to premium.

[1 R. L., 161, § 14.]

§ 19. If any controversy shall arise between the trustees and any other person in the settlement of any demands against such debtor, or of debts due his estate, the same may be referred to one or more indifferent persons, who may be agreed upon by the trustees and the party with whom such controversy shall exist, by a writing to that effect signed by them. [*Thus amended by L. 1862, ch. 373.*]

[45] Controversies may be referred to referees. 3 Hill, 294; 27 N. Y., 148; 44 Barb., 436; 42 N. Y., 156; 81 N. Y., 243; 88 N. Y., 626.

[1 R. L., 161, § 16; 469, § 21.]

§ 20. If such referee or referees be not selected by agreement, then the trustees or the other party to the controversy may serve a notice of their intention to apply to the officer who appointed said trustees, or to any judge of the supreme court at chambers, residing in the same district with said trustees, for the appointment of one or more referees, specifying the time and place when such application will be made, which notice shall be served at least ten days before the time so therein specified. [*Thus amended by L. 1862, ch. 373.*]

Notice of application for appointment of referees. 3 Hill, 290; 44 Barb., 436; 81 N. Y., 243.

[1 R. L., 161, § 14.]

TITLE 1.

Referees to
be nomi-
nated.
44 Barb.,
436; 81 N.
Y., 242.

§ 21. On the day so specified, upon due proof of the service of such notice, the officer before whom the application is made shall proceed to select one or more referees, the same in all respects as they are now selected, according to the rules and practice of the supreme court. [*Thus amended by L. 1862, ch. 373.*]

[1 R. L., 161, § 16; 469, § 21.]

Referees
may issue
commis-
sion.
44 Barb.,
436.

§ 22. When any witness to such controversy shall reside out of the county where the said trustees resided at the time of their appointment, the referee or referees appointed to hear said controversy shall have power to issue a commission or commissions in like manner as justices of the peace are now authorized to issue the same, and the testimony so taken shall be returned to said referee or referees in the same manner, and be read before them on a hearing, in like manner as testimony taken on commission before justices of the peace. [*Thus amended by L. 1862, ch. 373.*]

[1 R. L., 161, § 16; 469, § 21.]

Selection to
be cert-
ified, and
rule en-
tered.
44 Barb.,
436.

§ 23. The officer before whom they shall be selected, shall certify such selection in writing. Such certificate, or the written agreement of the parties, shall be filed by the trustees in the office of a clerk of the supreme court, when the trustees were appointed under the first article of this title; and in the said office, or in that of the clerk of the court of common pleas of the county, when the trustees were appointed under any other article of this title; and a rule shall thereupon be entered by such clerk in vacation or in term, appointing the persons so selected to determine the controversy.

[1 R. L., 161, § 16; 469, § 21.]

Powers,
etc., of ref-
erees.
44 Barb.,
436; 14
Abb., N. S.,
293; 103 N.
Y., 600.

§ 24. Such referees shall have the same powers, and be subject to the like duties and obligations, and shall receive the same compensation, as referees appointed by the supreme court, in personal actions pending therein.

[1 R. L., 161, § 16; 469, § 21.]

Report of
referees.

§ 25. The report of the referees shall be filed in the same office where the rule for their appointment was entered, and shall be conclusive on the rights of the parties, if not set aside by the court.

[1 R. L., 161, § 16; 469, § 21.]

Trustees to
convert es-
tate into
money.

[46]

Accounts,
etc.

When and
how, to call
general
meeting.
3 Abb. Ct.
App. Dec.,
236.

§ 26. The trustees shall, as speedily as possible, convert the estate, real and personal, of such debtor, into money. They shall keep a regular account of all monies received by them as trustees; to which, every creditor, or other person interested therein, shall be at liberty, at all reasonable times, to have recourse.

§ 27. The trustees, within fifteen months from the time of their appointment, shall call a general meeting of the creditors of such debtor, by a notice to be published in the same manner, as herein before directed respecting the publication of the notice of their appointment; in which notice, they shall specify the place and time of such meeting, which time shall not be more than three months, nor less than two months after the first publication of such notice. Every such notice shall be published at least once in each week, until the time of such meeting.

[1 R. L., 161, § 17; 469, § 21.]

§ 28. At such meeting, or other adjourned meeting thereafter, all accounts and demands, for and against the estate of such debtor, shall be fairly adjusted, as far as the same can be ascertained, and the amount of monies in the hands of the trustees declared.

§ 29. Out of the monies in their hands, the trustees may first deduct all the necessary disbursements made by them in the discharge of their duty, and a commission at the rate of five per cent. on the whole sum which shall have come into their hands.

[1 R. L., 164, § 27; 469, § 22.]

§ 30. If they shall have been appointed trustees under the first article of this title, they shall pay to every attaching creditor the amount of any recovery which may have been had against him, on any bond he may have executed for the purpose of retaining any property or any vessel, for the benefit of all the creditors, and his costs for defending any such suit.

§ 31. Whenever any bond shall have been executed by an attaching creditor for the purpose in the last section specified, the trustees shall retain a sufficient sum from the monies in their hands to indemnify such creditor, until a final determination be had, respecting his liability.

§ 32. They shall pay all debts due by such debtor to the United States, and all debts due by him to persons who, by the laws of the United States, have a preference in consequence of having paid money as sureties of such debtor.

§ 33. They shall distribute the residue of the monies in their hands, among all those who shall have exhibited their claims as creditors, and whose debts shall have been ascertained, in proportion to their respective demands, and without giving any preference to debts due on specialties, as follows:

1. In the case of proceedings under the first article of this title, among those who were creditors at the time of issuing the first warrant of attachment:

2. In proceedings under the third and fifth articles of this title, among those who were creditors at the time of the execution of the assignment by the insolvent:

3. In proceedings under the fourth article, when an assignment was executed by any officer as therein directed among those who were creditors at the time of the first publication of notice to creditors to appear and determine whether they will unite in a petition; and when the assignment was voluntary, among those who were creditors at the time of the execution thereof:

4. In proceedings under the sixth article, among those creditors, at whose suit the debtor was imprisoned on execution at the time of his discharge.

[1 R. L., 161, § 16; 468, § 19.]

§ 34. In making such distribution, the trustees shall first pay all debts that may be owing by the debtor as guardian, executor, administrator or trustee; and if there be not sufficient to pay all debts of the character above specified, then a distribution shall be made among them, in proportion to their amounts respectively.

§ 35. Every person to whom a debtor (except one proceeding

AET. 8.

Proceedings at such meeting.
3 Abb. Ct. App. Dec., 235.

Disbursements and commissions.
31 Barb., 91; 13 Wend., 384; 28 How. Pr. R., 87; 18 Abb., 451.

Duty of trustees under article 1.
4 N. Y., 178.

Duty of trustees under article 1.

U. S., &c., to be first paid.

Remainder how distributed.
3 Abb. Ct. App. Dec., 235; 1 Barb., 301; 7 Wend., 147.

499; 13 Johns. R., 343.

Debts due from debtor as guardian, &c.
7 Hill, 181; 6 Hill, 357; 3 Abb. Ct. App. Dec., 235.

Creditors

TITLE 1.

whose
debts are
not due.
6 Hill, 357;
5 Abb. Pr.,
468.

under the sixth article,) shall be indebted on a valuable consideration, for any sum of money not due at the time of such distribution, but payable afterwards, shall receive his proportion with other creditors, after deducting a rebate of legal interest upon the sum distributed, for the time unexpired of such credit.

[1 R. L., 162, § 18; 468, § 18.]

Mutual
credits,
etc., when
set off.
5 Robt., 303;
1 Edm. Se-
lect Cases,
485; 36
Barb., 311;
6 Paige,
230; 8 Edw.
Ch., 114; 36
N. Y., 363;
6 Bosw.,
638; 96 N.
Y., 311.
Set-offs of
demands
purchased.

§ 36. Where mutual credit has been given by any debtor (except a debtor proceeding under the sixth article of this title,) and any other person, or mutual debts have subsisted between such debtor and any other person, the trustees may set off such credits or debts, and pay the proportion or receive the balance due. But no set-off shall be allowed of any claim or debt, which would not have been entitled to a dividend, as herein before directed.

[1 R. L., 469, § 20.]

Suits pend-
ing.

§ 37. No set-off shall be allowed by such trustees, of any claim or debt, which shall have been purchased by, or transferred to, the person claiming its allowance, which could not have been set off by him, according to the provisions of this article, in a suit brought by such trustees.

Proportion
to be re-
tained.

[48]

§ 38. If, at the time any dividend is made, any prosecution be pending against the trustees, in which a demand against such debtor may be established, the trustees may retain in their hands, the proportion which would belong to such demand if established, and the necessary costs and expenses of such suit or proceeding, to be applied according to the event of such proceeding or suit, or to be distributed in a second or other dividend.

Penalties
recovered
by trustees.

§ 39. All penalties which shall be recovered by any trustees, pursuant to the provisions of this title, shall be deemed a part of the estate of the debtor, and shall be distributed as such among his creditors.

If whole es-
tate not
distributed
on first di-
vidend,
yearly di-
vidends to
be made.

§ 40. If the whole of such debtor's estate be not distributed on the first dividend, the trustees shall, within one year thereafter, make a second dividend of all the monies belonging to the estate of the debtor, then in their hands, among the creditors entitled thereto as herein before specified; and in the same manner from year to year, so long as any monies belonging to the estate of such debtor shall remain in the hands of the trustees, they shall make a dividend thereof among the creditors entitled thereto.

[1 R. L., 161, §§ 17 and 19; 470, § 23.]

Creditors
omitting to
deliver ac-
counts on
first di-
vidend, &c.
6 Bosw.,
638.

§ 41. Any creditor who shall have neglected to deliver to the trustees an account of his demand, before the first, second, third, or other dividend, and who shall deliver his account to them before the second, or other subsequent dividend, shall receive the sum he would have been entitled to, on any former dividend, before any distribution be made to other creditors.

[The same.]

Unclaimed
dividends.

§ 42. If any dividend that shall have been declared, shall remain unclaimed by the person entitled thereto for one year after the same was declared, the trustees shall consider it as relinquished, and shall distribute it, on any subsequent dividend, among the other creditors.

§ 43. If after settling the estate of any debtor, and after discharging his debts, entitled to a dividend, any surplus shall remain in the hands of his trustees, the same shall be paid to such debtor or his legal representatives.

ART. 8.
Surplus to be paid to debtor.

[1 R. L., 162, § 17; 468, § 19.]

§ 44. Every debtor who shall be discharged under the third, fourth or fifth articles of this title, shall be allowed the sum of five per cent. on the nett produce of all his estate, that shall be received by the assignees, to be paid to him by them, in case such nett produce, after such allowance made, shall be sufficient to pay the creditors of such debtor, entitled to a dividend, the sum of seventy cents on the dollar, on the amount of their debts respectively, as the same shall have been ascertained; but the said allowance shall not exceed in the whole, the sum of five hundred dollars.

Allowance to certain debtors.

[1 R. L., 470, § 24; L. 1819, 117, § 4.]

§ 45. Within ten days after any dividend made by any trustees they shall render on oath, and file with the clerk of the court of common pleas of the county in which they reside, or with a clerk of the supreme court, an account in writing of all their proceedings in the premises; stating,

Trustees to render account on oath.
(49)

1. Their disbursements, commissions, and the dividends made by them:

2. The names and residences of the creditors to whom dividends were made, and the names of those actually receiving them:

3. The property, monies and effects of the debtor remaining in their hands, and the value and situation of such property:

And such trustees may at any time be compelled by a rule of the supreme court, or of the court of common pleas of the county in which they reside, to render such account on oath, on the application of the debtor, or of any creditor.

[1 R. L., 471, § 27; L. 1823, 138, § 5.]

§ 46. Such trustees shall be subject to the order of the supreme court, and of the court of common pleas of the county in which they were appointed, upon the application of any creditor, or of any debtor in respect to whom they were appointed, in relation to the execution of any of the powers and duties confided to them; and they may be removed by the supreme court, for cause shown.

Trustees subject to order of courts.

May be removed.

§ 47. Whenever any authority shall be exercised by a court of common pleas, or any officer, pursuant to any provisions of this title, the proceedings may be removed into the supreme court by *certiorari*, and there examined and corrected. But no such *certiorari* shall issue, unless allowed by a justice of the supreme court, or a circuit judge; nor shall it operate as a stay of proceedings, unless it shall be so directed in the order of allowance.

Proceedings in common pleas removable into supreme court.
6 N. Y., 300;
40 How.
Pr. R., 167;
4 Hun, 300,
641
If trustee be removed, &c., new trustee may be appointed.

§ 48. Whenever any trustee shall be removed, or shall die, or become incapacitated to perform his duties, the officer who originally appointed such trustee, or in case of his absence, death, or removal, any other officer residing in the county where such trustee was resident, who by law would have been empowered to make such appointment, after giving notice, and an opportunity to the creditors to propose proper persons, may appoint another in the place of such

TITLE 1. trustee, who shall, in all respects, have the like powers and authority, and be subject to the same control, obligations and responsibilities; and the said appointment shall be certified and recorded, as the original appointment was required to be recorded.

[L. 1823, 137, § 4.]

Trustee wishing to renounce, may obtain order to show cause.

§ 49. Any trustee appointed pursuant to the provisions of this title, who shall be desirous of renouncing the trust vested in him, may apply to the officer, or court from whom his appointment was received, for an order to all persons interested, to show cause why such renunciation should not be accepted.

[The same.]

[50]
Id. Application to whom made.
6 N. Y., 319.

§ 50. If the officer who made such appointment shall not then be in office, such application may be made to a circuit judge, supreme court commissioner, or the first judge of the county, residing in the same county where the appointment of such assignee was made.

[The same.]

Application to be accompanied by account.

§ 51. Such application shall be accompanied by a full, true, and just account of all the transactions of such trustee, in that character, and particularly of the property, monies and effects received by him; of all payments made, whether to creditors or otherwise; and of the remaining effects and estate of the debtor, in respect to whom, or whose estate, he was appointed trustee, within his knowledge, and the situation of the same.

[The same.]

Affidavit to be annexed.

§ 52. To such account shall be annexed the affidavit of the trustee, that the said account is in all respects just and true, according to the best of his knowledge and belief: which affidavit shall be subscribed and sworn to, before the officer, or court, to whom the application is made, and shall be certified by him, or by the clerk of the court.

[The same.]

Notice to show cause.

§ 53. Such officer, or court, shall thereupon grant an order, directing notice to be given to all persons interested in the estate of the debtor, in respect to whom or whose estate such trustee was appointed, to show cause on a day, or at a term and at a place therein to be specified, why he should not be permitted to renounce his appointment.

[The same.]

Notice to be published.

§ 54. Such notice shall be published, once in each week, for six weeks successively, in the state paper, and in such other newspapers, as such officer or court shall direct.

[The same.]

Hearing.

§ 55. On the day appointed for such hearing, and on such other days as shall from time to time be appointed, if it shall appear that notice was duly published, the officer or court shall proceed to hear the proofs and allegations of the parties.

[The same.]

When trustee may be allowed to renounce.

§ 56. If it shall appear that the proceedings of such trustee in relation to his trust, have been fair and honest, and particularly in the collection of the property and debts vested in him; and if such

court or officer be satisfied, that for any reason, it is inexpedient for such trustee to continue in the execution of the duties of his appointment, and that such duties can be executed by another trustee, without injury to the estate of the debtor, or to the creditors; and if no good cause to the contrary appear, such officer or court shall grant an order, allowing such trustee to renounce his appointment, and to assign the property and effects of the debtor.

[The same.]

§ 57. Such assignment shall be executed by such trustee, to such person, or persons, as the court or officer shall appoint for that purpose; and in the appointment, such persons as shall have been named to be assignees by the creditors of such debtor, or by the major part of them, shall be preferred, if approved by such court or officer.

[The same.]

§ 58. Such assignment shall transfer to the persons to whom it shall be made, all the remaining estate and effects, vested in the trustee so renouncing; and such new assignee shall have the same powers, be subject to the same duties, and be entitled to the same compensation, as the original trustee; and shall continue any suit that may have been commenced by such original trustee, in his name, or in that of such new assignee.

[The same.]

§ 59. Upon producing to the officer or court allowing such assignment, the certificate of the assignee, duly proved by the oath of a subscribing witness, that such assignment has been duly made, and the property capable of delivery, belonging to such debtor, together with all the books, vouchers, and documents, relating to the estate of such debtor, has been duly delivered; and also a certificate of the county clerk, that such assignment has been recorded; such court or officer shall grant to the trustee so applying, an order that he be discharged from his trust.

[The same.]

§ 60. Upon such order being granted, such trustee shall be discharged from the trust reposed in him, and his power and authority shall thereupon cease; but he shall, notwithstanding, remain subject to any liability he may have incurred, at any time previous to the granting of such order, in the management of his trust.

[The same.]

§ 61. Such new assignment, upon being duly proved or acknowledged, shall be recorded in the office of the clerk of the county where such order was granted; and the petition of the trustee, the affidavit and proceedings thereon, with the certificate of the new assignee, shall be filed in the same office where the original papers and proceedings, in respect to such debtor, were filed.

[The same.]

§ 62. The expense of all proceedings in effecting such renunciation and assignment, shall be paid by the trustee making the application.

[The same.]

ART. 8.

Trustee to execute assignment.

[51]

Effect of assignment; powers, &c., of new assignee.

When order to be made discharging trustee.

Trustee thereupon discharged, subject to prior liabilities.

Assignment, petition, &c., to be recorded and filed.

Expenses to be paid by trustee.

L. 1846, Chap. 158—An act in relation to the appointment of assignees and trustees of non-resident, absconding, insolvent, or imprisoned debtors.

In case of absence other assignees or trustees to be appointed. SECTION 1. Whenever any assignee or trustee appointed under any authority conferred by any of the provisions of title one, chapter five and part two of the Revised Statutes, or of any previous statute relating to insolvent or imprisoned debtors, shall have removed from and shall have continued to reside out of this state for one year, or shall hereafter remove from and continue to reside out of this state for one year, it shall be lawful for the officer who originally appointed such assignee or trustee, or in case of his absence, death, or removal, his successor in office, or any other officer residing in the county where such assignee or trustee was resident, who by law would originally have been authorized and empowered to make an appointment of such assignee or trustee, after giving notice and an opportunity to the creditors to propose proper persons, to appoint another person in the place of such assignee or trustee so removed or to remove as aforesaid.

10 Barb., 534.

Their powers and duties. § 2. The assignee or trustee appointed in the place of the assignee or trustee so removed, or to remove as aforesaid, shall in all respects have the like powers and authority, and be subject to the same control, obligations and responsibilities as the assignee or trustee originally appointed; and the appointment of an assignee or trustee under the provisions of this act, shall be certified and recorded as the original appointment was required to be recorded.

[L. 1830, ch. 258, has been omitted as obsolete.]

[Supplementary Title.]

TITLE 1^A.

Of Voluntary Assignments by a Debtor, for the benefit of his Creditors.

L. 1877, Chap. 466—An act in relation to assignments of the estates of debtors for the benefit of creditors.

Short title. SECTION 1. This act may be cited for all purposes as "The general assignment act of eighteen hundred and seventy-seven."

Assignments, requisites; assent of assignee. § 2. Every conveyance or assignment made by a debtor of his estate, real or personal, or both, to an assignee for the creditors of such debtor, shall be in writing and shall specifically state therein the residence and the kind of business carried on by such debtor at the time of making the assignment, and the place at which such business shall then be conducted, and if such place be in a city, the street and number thereof, and if in a village or town such apt designation as shall reasonably identify such debtor. Every such conveyance or assignment shall be duly acknowledged before an officer authorized to take the acknowledgment of deeds; and every such conveyance or assignment shall be recorded in the county clerk's office of the county where such debtor shall reside or carry on his business at the date thereof. An assignment by co-partners shall be recorded in the county where the principal place of business of such co-partners is situated. When real property is a part of the property assigned, and is situated in a county other than the one in which the original assignment is required to be recorded, a certified copy of such assignment shall be filed and recorded in the county where such property is situated. The assent of the assignee, subscribed and acknowledged by him, shall appear in writing, embraced in or at the end of or indorsed upon the assignment, before

the same is recorded, and, if separate from the assignment, shall be duly acknowledged. [*Thus amended by L. 1888, ch. 294.*]

63 N. Y., 645; 11 Hun, 399; 14 Abb. N. C., 447; 15 Abb. N. C., 164, 241; 17 Abb. N. C., 152, 162, 197; 18 J. & S., 116; 22 W. D., 495; 24 Hun, 123; 31 Hun, 274; 34 Hun, 511, 524; 39 Hun, 98, 134, 545; 40 Hun, 178, 455; 41 Hun, 323; 52 N. Y., 494; 86 N. Y., 630; 96 N. Y., 75, 248; 105 N. Y., 1, 476; 104 N. Y., 575; 19 Abb. N. C., 92, 399; 101 N. Y., 472, 584; 35 Hun, 264; 44 Hun, 55; 48 Hun, 208; 43 Hun, 224; 13 Daly, 818; 45 Hun, 268; 18 Abb. N. C., 380; 26 W. D., 239.

Inventory. § 3. A debtor making an assignment shall, at the date thereof or within twenty days thereafter, cause to be made, and delivered to the county judge of the county where such assignment is recorded, an inventory or schedule containing

1. The name, occupation, place of residence, and place of business, of such debtor.

2. The name and place of residence of the assignee.

3. A full and true account of all the creditors of such debtor; stating the last known place of residence of each, the sum owing to each, with the true cause and consideration therefor, and a full statement of any existing security for the payment of the same.

4. A full and true inventory of all such debtor's estate at the date of such assignment, both real and personal, in law and in equity, with the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the nominal as well as actual value of the same according to the best knowledge of such debtor.

5. An affidavit made by such debtor, that the same is in all respects just and true. But in case such debtor shall omit, neglect or refuse to make and deliver such inventory or schedule within the twenty days required, the assignee named in such assignment shall, within thirty days after the date thereof, cause to be made, and delivered to the county judge of the county where such assignment is recorded, such inventory or schedule as above required, in so far as he can; and for such purpose said county judge shall, at any time, upon the application of such assignee, compel by order such delinquent debtor, and any other person to appear before him and disclose, upon oath, any knowledge or information he may possess, necessary to the proper making of such inventory or schedule. The assignee shall verify the inventory and schedule so made by him, to the effect that the same is in all respects just and true to the best of his knowledge and belief. But in case the said assignee shall be unable to make and file such inventory or schedule, within said thirty days, the county judge may, upon application upon oath, showing such inability, allow him such further time as shall be necessary, not exceeding sixty days. If the assignee fail to make and file such inventory or schedule within said thirty days or such further time as may be allowed, the county judge shall require, by order, the assignee forthwith to appear before him, and show cause why he should not be removed. Any person interested in the trust estate, may apply for such order and demand such removal. The books and papers of such delinquent debtor shall at all times be subject to the inspection and examination of any creditor. The county judge is authorized by order to require such debtor or assignee to allow such inspection or examination. Disobedience to such order is hereby declared to be a contempt, and obedience to such order may be enforced by attachment. The inventory or schedule shall be filed by said county judge in the office of the clerk of said county in which said assignment is recorded. [*This subd. thus amended by L. 1878, ch. 318.*]

67 N. Y., 199; 1 Abb. N. C., 174, 409; 7 Daly, 52; 8 Daly, 124; 79 N. Y., 19; 18 J. & S., 100; 26 Hun, 229; 30 Hun, 195; 85 N. Y., 464; 88 N. Y., 669; 89 N. Y., 270; 93 N. Y., 374; 94 N. Y., 387; 99 N. Y., 539; 43 Hun, 324; 105 N. Y., 1.

Advertisement for claims. § 4. The county judge may, upon the petition of the assignee, authorize him to advertise for creditors to present to him their claims

with the vouchers therefor, duly verified, on or before a day to be specified in such advertisement, not less than thirty days from the last publication thereof, which advertisement or notice shall be published in two newspapers, to be designated by the county judge, as most likely to give notice to the persons to be served, not less than once a week for six successive weeks, and, if it appears that any of such creditors reside out of the state, then in like manner in the state paper.

9 Daly, 479; 10 Daly, 47.

Bond of assignee. § 5. The assignee named in any such assignment shall, within thirty days after the date thereof, and before he shall have any power or authority to sell, dispose of or convert to the purposes of the trust any of the assigned property, enter into a bond to the people of the state of New York, in an amount to be ordered and directed by the county judge of the county where such assignment is recorded, with sufficient sureties to be approved of by such judge, and conditioned for the faithful discharge of the duties of such assignee and for the due accounting for all moneys received by him, which bond shall be filed in the clerk's office of the county where such assignment is recorded, but in case the debtor shall fail to present such inventory within the twenty days required, then the assignee, before the ten days thereafter shall have elapsed, may apply to said county judge by verified petition for leave to file a provisional bond, until such time as he may be able to present the schedule or inventory as hereinbefore provided.

67 N. Y., 199; 59 N. Y., 649; 5 Abb. N. C., 307; 71 N. Y., 503; 8 Hun, 516; 13 Hun, 176; 74 N. Y., 317; 22 Hun, 245; 10 Daly, 148; 23 Hun, 289; 32 Hun, 501; 39 Hun, 435; 86 N. Y., 270.

Removal of assignee; new assignee; correcting inventory. § 6. The county judge shall, in the case provided in section three, and may also, at any time, on the petition of one or more creditors, showing misconduct or incompetency of the assignee, or on petition of the assignee himself, showing sufficient reason therefor, and after due notice of not less than five days to the assignor, assignee, surety and such other person as such judge may prescribe, remove or discharge the assignee, and appoint one or more in his place, and order an accounting of the assignee so removed or discharged, and may enjoin such assignee from interfering with the assignor's estate, and make provision by order for the safe custody of the same, and enforce obedience to such injunction and orders by attachment; and, upon his discharge upon his own application, such assignee's bond shall be cancelled and discharged. The new assignee shall give a bond, to be approved as above required. The county judge shall have power, by order, to require or allow any inventory or schedule filed to be corrected or amended, and also to require and compel, from time to time, supplemental inventories or schedules to be made and filed within such time as he shall prescribe, and to enforce obedience to such orders by attachment. [*Thus amended by L. 1878, ch. 318.*]

1 Abb. N. C., 409; 7 Daly, 59; 78 N. Y., 248; 10 Daly, 27, 57, 106, 143, 148; 85 N. Y., 629; 13 Daly, 310, 526.

Further security. § 7. The county judge may, upon his own motion or upon the application of any party in interest, and on such notice as he may direct to be given to the assignor, assignee and surety, require further security to be given whenever in his judgment the security afforded by the bond on file is not adequate.

Failure to file bond. § 8. A failure to file any bond required by or under this act or the acts hereby amended, within the specified time will not deprive the county judge of his power over the assignee or the trust estate.

Action on bond. § 9. Any action brought upon an assignee's bond may be prosecuted by a party in interest by leave of the court; and all moneys realized thereon shall be applied by direction of the county judge in satisfaction of the debts of the assignor, in the same manner as the same ought to have been applied by such assignee.

Death of assignee. § 10. In case an assignee shall die during the pendency of any proceeding under this act, or at any time subsequent to the filing of any bond required herein, his personal representative or successor in office, or both, may be brought in and substituted in such proceeding on such notice (of not less than eight days), as the county judge may direct to be given; and any decree made thereafter shall bind the parties thus substituted as well as the property of such deceased assignee, provided, however, that if such assignee die subsequent to the filing of his bond and before any proceedings may have been had thereunder, then the surety on such bond may apply to the county judge for an accounting, who may, on such terms as to him seem just and proper, appoint another assignee and release such surety.

Accounting. § 11. A citation may be issued to all parties, interested in the estate assigned, as creditors or otherwise, requiring them to appear in court on some day therein to be specified, and to show cause why a settlement of the account of proceedings of the assignee should not be had, and if no cause be shown, to attend the settlement of such account. The county court must issue all citations mentioned in this act which must be returnable in court. It may issue a citation on the petition of an assignee, at any time after the assignment or on petition of a creditor, or an assignee's surety, or an assignor, at any time after the lapse of one year from the date of such assignment, or where an assignee has been removed and ordered to account, as hereinbefore provided. [*Thus amended by L. 1878, ch. 378.*]

1 Abb. N. C., 404; id., 399; 64 N. Y., 1; 67 id., 542; 75 N. Y., 187; 8 Daly, 190; 23 Hun, 91; 10 Daly, 52, 57; 28 W. D., 809; 10 Daly, 31; 26 Hun, 214; 34 Hun, 217; 19 Abb. N. C., 177; 44 Hun, 298.

Citation. § 12. A citation issued on the petition of a creditor may be addressed to and served on the assignee alone, but on or after the return of such citation the assignee may have a general citation issued to all parties interested.
26 Hun, 214.

Service of citation. § 13. A citation to all persons interested must be served on all parties other than the petitioner who are interested in the fund, including assignors, assignees and their sureties, except that if the time limited by due advertisement for presentation of claims has expired before the issue of the citation, creditors who have not duly presented their claims need not be served. In case the creditors of such assignor, who have proved their claims, exceed twenty-five in number, then the county judge, upon proof by affidavit that such creditors exceed such number, may by order direct such citation to be served on each creditor who has proved his claim, by depositing a copy of the same, at least thirty days prior to the return day thereof, in the post-office at the place where the assignee or assignees, or either of them, reside, duly inclosed and directed to each of such creditors, at his last known post-office address, with the postage prepaid; and by publishing such citation once a week for at least four weeks prior to such return day in one or more newspapers, to be designated by such county judge as most likely to give notice to such creditors. [*Thus amended by L. 1878, ch. 318.*]

13 Daly, 413.

Service of citation. § 14. A citation personally served within the county of the judge or an adjoining county must be so served at least eight days before the return thereof; if in any other county, at least fifteen days before the return thereof.

Service by publication. § 15. The county judge may direct service to be made by publication when he is satisfied by affidavit or verified petition either that the person to be so served is unknown, or that his residence cannot, after diligent inquiry, be ascertained, or that he cannot, after due diligence, be found within the state. The order for such service must direct service of the citation upon such person to be made by publication thereof in one newspaper to be designated by the county judge as most likely to give notice to the person to be served, and

also, if it appear that any such person resides without the state, then in the state paper for such length of time as he may deem reasonable, not less than once a week for six weeks, and that a copy of the citation be forthwith deposited in the post-office duly enclosed and directed to each person so served, at his last known place of residence or post-office address, and the postage paid thereon, at least thirty days before the return day thereof.

Personal service without the state. § 16. When publication has been ordered, personal service without the state made if within the United States at least thirty days, or without the United States, at least forty days before the return day is equivalent to publication and mailing.

Service on minors, etc. § 17. Personal service upon minors and persons incompetent shall be made in the manner prescribed by law for the service of citations issued by a surrogate, in case of final accounting.

On joint creditors. § 18. Personal service upon one of two or more creditors who claim as co-partners or otherwise as joint creditors shall be equivalent to personal service on all, and voluntary appearance either in person or by attorney shall be equivalent to personal service.

Appearance without service. § 19. On the return of a citation to all parties interested, any person claiming an interest, although not served, may appear and become a party on duly presenting his claim.

8 Daly, 119.

Power of county court on accounting. § 20. On a proceeding for an accounting under this act, the county court shall have power: [*Thus amended by L. 1878, ch. 318.*]

1. To examine the parties and witnesses on oath in relation to the assignment and accounting and all matters connected therewith and to compel their attendance for that purpose and their answers to questions, and the production of books and papers.

2. To require the assignee to render and file an account of his proceedings, and to enforce the same in the manner provided by law for compelling an executor or administrator to comply with a surrogate's order for an account.

3. To take and state such account, or to appoint a referee to take and state it; and such referee shall have the powers enumerated in subdivision one of this section.

4. To settle and adjudicate upon the account and the claims presented, and to decree payment of any creditor's just proportional part of the fund, or, in case of a partial accounting, so much thereof as the circumstances of the case render just and proper.

5. To discharge the assignee and his surety at any time, upon performance of the decree, from all further liability upon matters included in the accounting, to creditors appearing and to creditors not having appeared after due citation, or not having presented their claims after due advertisement.

6. On proof of a composition between the assignor and his creditors, to discharge the assignee and his sureties from all further liability to the compounding creditors appearing or duly cited, and to authorize the assignee to release the assets to the assignor; provided, however, that if there be any creditors not assenting to the composition, the court shall determine what proportion of the fund shall be paid to or reserved for creditors not assenting, which shall not be less than the sum or share to which they would be entitled if no composition had been made, and may decree distribution accordingly. [*This subdivision thus amended by L. 1878, ch. 318.*]

7. To adjourn the proceedings from time to time, issue further citations if necessary, and amend the petition and proceedings thereon before decree in furtherance of justice.

8. To punish as for a contempt any disobedience or violation of any order made or process issued in pursuance of this act or the acts hereby amended, and to

restrain by arrest and imprisonment any party or witness when it shall satisfactorily appear that such party or witness is about to leave the jurisdiction of the court, and to take bail to secure the attendance of such party or witness, to be prosecuted under the order of the court in case of forfeiture by and for the benefit of the party in whose interest such examination shall be ordered.

9. To exercise such other or further powers in respect to the proceedings and the accounting therein as a surrogate may by law exercise in reference to an accounting by an executor or administrator.

2 Abb. N. C., 379; 8 Daly, 75; 8 Daly, 190; 78 N. Y., 259; 79 N. Y., 302; 81 N. Y., 421; 17 W. D., 167; 22 W. D., 13, 73; 9 Daly, 68, 220; 10 Daly, 13, 67, 104, 128, 141; 23 Hun, 188; 26 Hun, 214, 258; 30 Hun, 151, 195; 33 Hun, 557; 34 Hun, 219, 504; 36 Hun, 134; 40 Hun, 64; 87 N. Y., 387; 99 N. Y., 145, 539; 27 Hun, 508; 44 Hun, 297; 13 Daly, 21, 24, 181, 373, 481, 105, 220; 45 Hun, 552; 105 N. Y., 56, 256, 476, 619.

Examination of witnesses, books, etc. § 21. The county judge may also, at any time, on petition of any party interested, order the examination of witnesses and the production of any books and papers by any party or witness before him or before a referee appointed by him for such purpose, and the evidence so taken, together with books and papers, or extracts therefrom, as the case may be, shall be filed in the county clerk's office, and may be used in evidence by any creditor or assignee in any action or proceeding then pending, or which may hereafter be instituted. No witness or party as above provided shall be excused from answering on the ground that his answer may criminate him, but such answer shall not be used against him in any criminal action or proceeding.

15 W. D., 110; 16 Abb. N. C., 816; 20 Daly, 18, 31, 99, 115; 36 Hun, 134; 99 N. Y., 539; 19 Abb. N. C., 94; 13 Daly, 26.

Effect of orders and decrees; clerk to keep assignment book. § 22. All orders or decrees in proceedings under this act shall have the same force and effect, and may be entered, docketed and enforced and appealed from, the same as if made in an original action brought in the county court. And all proceedings under this act shall be deemed to be had in court. The said court shall always be open for proceedings under this act. The county judge when named in this act, shall, in such proceedings, be deemed to be acting as the court. The clerk of the court shall keep a separate book, in which shall be entered each case, the date and place of record of the assignment, and a minute of all proceedings therein, under this act, with such particularity as the court shall direct by general order. He shall record therein at length the orders and decrees of the court, settling, rejecting or adjusting claims, and directing the payment of money, or releasing assets by the assignee, and removing or discharging the assignee and his sureties, and such other orders as the court shall direct by general order. The said clerk shall securely keep the papers in each case in a file by themselves, and shall be entitled to a fee of one dollar for filing all the papers in each case, and entering the proceedings in the minute book, and fifty cents, to be paid by the assignee, unless otherwise directed, for recording each order or decree required by this act or the general order of the court. [*Thus amended by L. 1878, ch. 318.*]

44 Hun, 197; 10 Daly, 33; 99 N. Y., 145.

Sale or compromise of debts. § 23. The county judge of the county where the assignment is recorded may, upon the application of the assignee and for good and sufficient cause shown, and upon such terms as he may direct, authorize the assignee to sell, compromise, or compound any claim or debt belonging to the estate of the debtor. But such authority shall not prevent any party interested in the trust estate from showing upon the final accounting of such assignee that such debt or claim was fraudulently or negligently sold, compounded or compromised. The sale of any debt or claim, heretofore made in good faith by any assignee, shall be valid, subject, however, to the approval of the county judge; and the assignee shall be charged with, and be liable for, as part of the trust fund, any sum which might or ought to have been collected by him. [*Thus amended by L. 1885, ch. 464.*]

18 Hun, 232; 8 Daly, 89.

Papers where filed in New York; judge to act. § 24. In the city and county of New York all papers except assignments, which by this act are required to be hereafter filed or recorded in the county clerk's office shall be filed or recorded in the office of the clerk of the court of common pleas of said city and county; and any judge of said court may exercise all the powers of a county judge for said county for the purposes of this act, and any act or proceeding commenced or returnable before, or instituted or ordered by, one of the judges of said court, may be heard continued or completed, by or before any other of them.

64 How. Pr., 353; 10 Daly, 148; 99 N. Y., 539.

Jurisdiction. § 25. Any proceeding under this act shall be deemed for all purposes, including review by appeal or otherwise, to be a proceeding had in the court as a court of general jurisdiction, and the court shall have full jurisdiction to do all and every act relating to the assigned estate, the assignees, assignors and creditors, and jurisdiction shall be presumed in support of the orders and decrees therein unless the contrary be shown; and after the filing or recording of an assignment under this act, the court may exercise the powers of a court of equity in reference to the trust and any matters involved therein.

40 Hun, 64.

Trial; fees and costs; commission of assignee. § 26. The court, in its discretion, may order a trial by jury or before a referee, of any disputed claim or matter arising under the provisions of this act, or the acts hereby amended. It may in its discretion award reasonable counsel fees and costs, determine which party shall pay the same, and make all necessary rules to govern the practice under this act. The assignee or assignees named in any assignment shall receive for his or their services a commission of five per centum on the whole sum which will have come into his or their hands. [*Thus amended by L. 1878, ch. 318.*]

1 Abb. N. C., 53; id., 173; 8 Hun, 516; 61 N. Y., 344; 2 Abb. N. C., 222; 18 Hun, 195; 8 Daly, 119; 9 Abb. N. C., 132; 10 Abb. N. C., 284; 10 Daly, 11, 39, 52, 74; 30 Hun, 258; 34 Hun, 217; 36 Hun, 136; 40 Hun, 523; 44 Hun, 198; 86 N. Y., 398; 89 N. Y., 259; 99 N. Y., 145, 539; 13 Daly, 23, 481, 41.

Explanatory. § 27. Whenever words in this act importing the plural number are used in describing or referring to any matters, parties or persons, any single matter, party or person shall be deemed to be included, although distributive words may not be used; and when any singular matter, party or person is described or referred to by words importing the singular number or the masculine gender, several matters and persons and females as well as males, and bodies corporate as well as individuals shall be deemed to be included, unless otherwise specially provided or unless there be something in the subject or context repugnant to such construction.

Repeal. § 28. Chapter three hundred and forty-eight of the laws of eighteen hundred and sixty, entitled "An act to secure to creditors a just division of the estates of debtors, who convey to assignees for the benefit of creditors," and the several acts amendatory thereof, are hereby repealed, but this shall not affect any proceedings had; and any proceedings pending under the acts hereby referred to may be continued under this act.

Wages owing employees to be preferred. § 29. In all distribution of assets, under all assignments made in pursuance of this act, the wages or salaries actually owing to the employees of the assignor or assignors at the time of the execution of the assignment, shall be preferred before any other debt; and should the assets of the assignor or assignors not be sufficient to pay in full all the claims preferred, pursuant to this section, they shall be applied to the payment of the same pro rata to the amount of each such claim. [*Thus amended by L. 1886, ch. 283, superseding L. 1884, ch. 328.*]

39 Hun, 537; 40 Hun, 121; 43 Hun, 380; 46 Hun, 114; 104 N. Y., 606.

Preferences in future assignments limited to one-third of estate. § 30. In all general assignments of the estates of debtors for the benefit of creditors hereafter made,

any preference created therein (other than for the wages or salaries of employees under chapter three hundred and twenty-eight of the laws of eighteen hundred and eighty-four, and chapter two hundred and eighty-three of the laws of eighteen hundred and eighty-six) shall not be valid except to the amount of one-third in value of the assigned estate left after deducting such wages or salaries, and the costs and expenses of executing such trust; and should said one-third of the assets of the assignor or assignors be insufficient to pay in full the preferred claims to which, under the provisions of this section, the same are applicable, then said assets shall be applied to the payment of the same pro rata to the amount of each said preferred claims. [Added by L. 1887, ch. 503.]

105 N. Y., 256.

L. 1885, Chap. 380—An act to confer additional powers upon the supreme court of the state of New York and the justices thereof.

Powers, etc., of county judges under general assignment act conferred on justices of the supreme court, etc. SECTION 1. All powers, rights and duties conferred upon county courts and county judges by chapter four hundred and sixty-six of the laws of eighteen hundred and seventy-seven, entitled "An act in relation to assignments of the estates of debtors for the benefit of creditors," and by acts amendatory thereof and additional or supplemental thereto, are hereby also conferred upon and shall be exercised by the supreme court and the justices of the supreme court of the state of New York, concurrently with county courts and county judges. All applications under said acts made in the supreme court shall be made to the court, or a justice thereof, within the judicial district where the assignment is recorded, and all proceedings and hearings under said acts had in the supreme court upon the return of a citation shall be had at a special term of said court held in the county where the judgment debtor resided at the time of the assignment, or in case of an assignment by copartners, in the county where the principal place of business of such co-partners was at the time of such assignment.

49 Hun, 66.

TITLE II.

TITLE 2.
[51-55]

Of the Custody and Disposition of the Estates of Idiots, Lunatics, Persons of unsound Mind, and Drunkards.

[The foregoing title was expressly repealed by L. 1880, ch. 245, which was passed May 10, 1880, to take effect September 1, 1880, and contained a clause declaring that the repeal of the portions of the Revised Statutes therein specified effected, also, the repeal of all statutes, remaining unrepealed on August 31, 1880, which expressly amended such portions of the Revised Statutes, by adding to or otherwise altering the text thereof. On May 6, 1880, was passed the supplement to the Code of Civil Procedure, chapter 178 of that year (the nine chapters), to take effect on September 1, 1880, and which contained substitutes for the original provisions of the foregoing title of the Revised Statutes. Finally on May 26, 1880, an act was passed (chap. 423), amending section 22 of that title, which last-named act, as amended in 1885, is accordingly here given.]

L. 1880, Chap. 423—An act to amend chapter five, title two, part two of the Revised Statutes of the state of New York.

Amending the Revised Statutes. SECTION 1. Section twenty-two of chapter five, title two, part two of the Revised Statutes, is hereby amended so as to read as follows:

Lunatics, contracts of. § 22. The supreme court shall have authority to decree and compel the specific performance of any bargain, contract or agreement which may have been made by any lunatic or other person specified in the first section of this title, while such lunatic or other person was capable to contract; and of any contract in relation to lands made by the ancestor of such person from whom such person inherits or takes as devisee or otherwise; and to direct the committee of such person to do and execute all necessary conveyances and acts for that purpose; and in case the person entitled to such conveyance is the committee of such person specified in section one of this title, the said court may, upon the petition of said committee, appoint some suitable and proper person to execute the said conveyance in the name of such lunatic or other person specified in section one of this title, upon payment by the vendee of any sum remaining due to such person upon said contract, or upon the fulfilment of the contract on the part of the party who contracted with the person represented by said committee. [*Thus amended by L. 1885, ch. 267, § 2.*]

CHAPTER VI.

[56]

OF WILLS AND TESTAMENTS; OF THE DISTRIBUTION OF THE ESTATES OF INTESTATES; AND OF THE RIGHTS, POWERS, AND DUTIES OF EXECUTORS AND ADMINISTRATORS.

TITLE I.—OF WILLS AND TESTAMENTS OF REAL AND PERSONAL PROPERTY, AND THE PROOF OF THEM.

TITLE II.—OF GRANTING LETTERS TESTAMENTARY AND OF ADMINISTRATION.

TITLE III.—OF THE DUTIES OF EXECUTORS AND ADMINISTRATORS IN TAKING AND RETURNING INVENTORIES, IN THE PAYMENT OF DEBTS AND LEGACIES, IN ACCOUNTING, AND IN MAKING DISTRIBUTION TO NEXT OF KIN.

TITLE IV.—OF THE POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS, IN RELATION TO THE SALE AND DISPOSITION OF THE REAL ESTATE OF THEIR TESTATOR OR INTESTATE.

TITLE V.—OF THE RIGHTS AND LIABILITIES OF EXECUTORS AND ADMINISTRATORS.

TITLE VI.—OF PUBLIC ADMINISTRATORS.

TITLE I.

Of Wills and Testaments of real and personal Property, and the Proof of them.

ART. 1.—Of wills of real property, and the proof of them.

ART. 2.—Of wills of personal property, and the probate of them.

ART. 3.—General provisions applicable to wills of real and personal property.

ARTICLE FIRST.

OF WILLS OF REAL PROPERTY, AND THE PROOF OF THEM.

SEC. 1. All persons except idiots, etc., may devise real estate.

2. Every interest in real property descendible to heirs, may be devised.

3. To whom devises may be made; devises to corporations, when valid.

4. Devises to certain aliens void; who to take the interest devised to them.

5. Wills of real estate, when to pass all testator's estate.

6-20. [Repealed.]

SECTION 1. All persons, except idiots, persons of unsound mind and infants, may devise their real estate, by a last will and testament, duly executed according to the provisions of this title. [Thus amended by L. 1867, ch. 782.]

Who may
devise.
[57]

1 Redf., 138; 51 Barb., 202; 54 Barb., 286; 50 Barb., 671; 17 Barb., 236, 276; 16 Barb., 293; 10 Barb., 604; 4 Barb., 28; 3 Denio, 41; 26 Wend., 297; 1 Paige, 171; 3 Duer, 96.

[1 R. L., 364, §§ 1 and 5.]

§ 2. Every estate and interest in real property descendible to heirs, may be so devised.

What may
be devised.

17 Barb., 84; 15 Barb., 189; 2 Wend., 166, 517; 7 Cow., 243; 10 Paige, 147; 24 N. Y., 612; 40 Barb., 621; 36 Barb., 553; 46 N. Y., 163.

[The same.]

§ 3. Such devise may be made to every person capable by law of holding real estate; but no devise to a corporation shall be valid,

Who may
take by de-
vise.

TITLE 1. unless such corporation be expressly authorised by its charter, or by statute, to take by devise.

53 Barb., 309; 4 Abb. Ct. App. Dec., 231; 46 N. Y., 163; 34 N. Y., 584, 613; 53 N. Y., 676; 16 Abb., N. S., 128; 59 N. Y., 530; 79 N. Y., 327; 81 N. Y., 131; 33 N. Y., 377; 31 Barb., 563; 27 Barb., 498; 4 Paige, 422; 3 Sandf., 390; 52 N. Y., 333, 450, 530; 26 Hun, 651.

[The same.]

Devises to
aliens.

19 N. Y.,
379; 5 N.
Y., 339; 32
Barb., 266;
16 Barb.,
601; 9
Barb., 50; 6
Johns. Ch.
R., 390; 13
Abb., N. S.,
473; 38 N. Y., 357.

Wills of
real estate
how con-
strued.

§ 4. Every devise of any interest in real property, to a person who, at the time of the death of the testator, shall be an alien, not authorized by statute to hold real estate, shall be void. The interest so devised, shall descend to the heirs of the testator; if there be no such heirs competent to take, it shall pass under his will to the residuary devisees therein named, if any there be, competent to take such interest.

§ 5. Every will that shall be made by a testator, in express terms, of all his real estate, or in any other terms denoting his intent to devise all his real property, shall be construed to pass all the real estate, which he was entitled to devise, at the time of his death.

54 N. Y., 88; 45 N. Y., 257; 5 N. Y., 311; 18 Barb., 538; 17 Barb., 353; 11 Barb., 333; 1 Hill, 596; 20 Wend., 469; 13 Wend., 583; 10 Paige, 148; 1 Sandf. Ch., 334; 41 Barb., 52; 36 N. Y., 210.

[So much of sections 6-20 as had not been previously repealed, was repealed by L. 1880, ch. 245.]

L. 1879, Chap. 316—An act to amend chapter two hundred and thirty-eight of the laws of eighteen hundred and fifty-three, entitled "An act relative to disputed wills."

Amendment. SECTION 1. Section one of chapter two hundred and thirty-eight of the laws of eighteen hundred and fifty-three, entitled "An act relative to disputed wills," is hereby amended so as to read as follows:

Validity of wills, how determined. § 1. The validity of any actual or alleged devise or will of real estate may be determined by the supreme court in a proper action for that purpose, in which all persons interested, or who claim an interest in the question, may be made parties, and such action may be brought by any heir at law of the actual or alleged testator or testatrix, or by any devisee under any actual or alleged will; and thereupon after final judgment in such action any party may be enjoined from setting up or from impeaching such devise or will, as justice may require. The court may also, in its discretion, during the pendency of any such action, restrain the commencement or prosecution of any other action involving the trial of the same question. Such adjudication, however, shall not determine nor affect the validity of any such will as to any personal property; nor shall this act, or any proceeding taken by virtue thereof affect or interfere with any suit or proceeding in any court of this state relating to the probate of any will. Issues of fact in such actions may be tried by a jury or the court, as the nature of the case may require and the court shall direct.

40 Hun, 383; 41 Hun, 371.

[L. 1853, ch. 238, was repealed by L. 1880, ch. 245, the first section of the former act being revised in Code Civ. Proc., § 1866, but the foregoing amendatory act of 1879 remains unrepealed. See L. 1880, ch. 245, § 8, subd. 9, and § 4.]

ARTICLE SECOND.

OF WILLS OF PERSONAL PROPERTY, AND THE PROBATE OF THEM.

SEC. 21. Males of 18, and unmarried females of 16, may make wills of personal estate.

22. Unwritten wills void, unless made by soldier in service, or mariner at sea.

23-39. [Repealed.]

[33-60]

§ 21. Every male person of the age of eighteen years or upwards, and every female of the age of sixteen years or upwards, of sound mind and memory, and no others, may give and bequeath his or her personal estate, by will in writing. [*Thus amended by L. 1867, ch.*

ART. 3.

Who may
make wills
of personal
estate.

782.] 19 N. Y., 490; 21 Barb., 107; 16 Barb., 263; 1 Barb. Ch., 13, 273; 26 Wend., 297; 3 Bradf., 107, 172; 4 id., 133, 226; id., 311; 3 id., 209, 241, 393, 461, 481; 2 Bradf., 43, 133, 188, 244, 261, 296, 360, 385, 449; 1 do., 114, 221, 360, 378, 458; 12 N. Y., 415; 1 Redf., 136; 5 Redf., 53, 230, 628; 36 Hun, 649; 37 Hun, 254.

[1 R. L., 367, § 16.]

§ 22. No nuncupative or unwritten will, bequeathing personal estate, shall be valid, unless made by a soldier while in actual military service, or by a mariner, while at sea.

Unwritten
wills, when
allowed.
8 N. Y., 190;
12 Barb.,
155; 4
Bradf., 154.

[1 R. L., 367, § 14.]

[Sections 23-27 were repealed by L. 1837, ch. 460.]

[Sections 28-39 were repealed by L. 1880, ch. 245.]

[61-63]

ARTICLE THIRD.

GENERAL PROVISIONS APPLICABLE TO WILLS OF REAL AND PERSONAL PROPERTY.

SEC. 40. Wills of real or personal property, or both, how to be executed.

41. Witnesses to state their places of residence, etc.; penalty; effect of omission.

42. Written wills, how to be revoked or cancelled.

43. Marriage and birth of issue, when to be a revocation of a prior will.

44. Will of unmarried women revoked by subsequent marriage.

45. Bond, etc., to convey property devised, not a revocation, etc.

46. Charge of incumbency not a revocation; property to pass subject thereto.

47 & 48. Conveyance, etc., altering estate devised, when to be deemed a revocation.

49. After-born child, if unprovided for, to have portion of estate.

50. Devisee or legatee may witness will, but devise to him void.

51. When share of the estate to be saved to such witness.

52. Legatee, etc., dying before testator, devise in certain cases, not to lapse.

53. When the cancelling of a second will is not to revive first will.

54-68. [Repealed.]

69. Provisions as to revocations, to what wills to apply.

70. Execution or construction of prior wills not affected by this title.

71. Term "will" to include codicils.

§ 40. Every last will and testament of real or personal property, or both, shall be executed and attested in the following manner:

Wills, how
to be exe-
cuted.

1. It shall be subscribed by the testator at the end of the will.

2. Such subscription shall be made by the testator, in the presence of each of the attesting witnesses, or shall be acknowledged by him, to have been so made, to each of the attesting witnesses.

3. The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed, to be his last will and testament.

4. There shall be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator.

23 N. Y., 9; 23 N. Y., 376; 11 N. Y., 223; 9 N. Y., 371; 6 N. Y., 120; 4 N. Y., 146; 27 Barb., 557; 23 Barb., 670; 20 Barb., 243; 19 Barb., 448; 15 Barb., 305; 13 Barb., 24; 11 Barb., 126; 10 Barb., 608; 3 Barb., 327; 2 Barb., 203, 393; 1 Barb., 530; 3 Barb. Ch., 168; 1 Denio, 36; 26 Wend., 331; 4 Wend., 168; 10 Paige, 91; 8 Paige, 448; 1 Sandf. Ch., 235; 4 Sandf. S. C., 10; 3 Sandf. S. C., 52; 3 Bradf., 35, 227, 322, 385; 2 Bradf., 163; 1 Bradf., 359; 38 Barb., 151; 37 Barb., 340; 52 N. Y., 128, 517; 36 N. Y., 418, 487; 50 N. Y., 92; 1 Abb. Ct. App. Dec., 443; 62 Barb., 251, 391; 43 How. Pr. R., 476; 4 Abb. N. S., 41; 2 Lans., 41; 1 Tucker, 298, 300, 454; 1 Redf., 366; 15 Abb. N. S., 211; 6 Hun, 279; 66 Barb., 261; id., 317; 6 T. & C., 78; 67 N. Y., 409; 2 Redf., 77; id., 239; id., 369; id., 449; 62 N. Y., 634; 15 Hun, 100; 16 Hun, 97; 3 Redf., 74; id., 181; id., 327; id., 34; 19 Hun, 65; 21 Hun, 533; 22 Hun, 84; 5 Redf., 20, 271, 316, 376, 431, 544, 561, 624; 1 Dem., 256, 436, 496; 2 Dem., 309, 471, 498, 505; 3 Dem., 48, 98, 101, 427, 459, 462, 494; 4 Dem., 14, 56, 125, 279; 23 W. D., 248; 27 Hun, 130; 28 Hun, 473; 35 Hun, 447; 37 Hun, 15; 38 N. Y., 377; 91 N. Y., 261, 516; 94 N. Y., 535; 95 N. Y., 494; 98 N. Y., 267, 427; 5 Dem., 19, 68; 42 Hun, 434, 563; 44 Hun, 571; 45 Hun, 1; 103 N. Y., 167.

[1 R. L., 364, § 2.]

TITLE I.

(64)
Witnesses
to state
their
places of
residence,
&c.

§ 41. The witnesses in any will, shall write opposite to their names their respective places of residence; and every person who shall sign the testator's name to any will by his direction, shall write his own name as a witness to the will. Whoever shall neglect to comply with either of these provisions, shall forfeit fifty dollars, to be recovered by any person interested in the property devised or bequeathed, who shall sue for the same. Such omission shall not affect the validity of any will; nor shall any person liable to the penalty aforesaid, be excused or incapacitated on that account, from testifying respecting the execution of such will.

Written
wills, how
to be re-
voked or
cancelled.

§ 42. No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked, or altered, otherwise than by some other will in writing, or some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be burnt, torn, cancelled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person, the direction and consent of the testator, and the fact of such injury or destruction, shall be proved by at least two witnesses.

16 N. Y., 9; 11 N. Y., 157; 26 Barb., 74; 10 Barb., 21; 9 Barb., 534; 4 Barb., 31; 4 Abb., 330; 1 Sandf. Ch., 334; 3 Duer, 477; 4 Bradf., 334; 3 Bradf., 25, 93; 3 Bradf., 210, 281; 1 Bradf., 114, 438, 478; 35 N. Y., 654; 34 N. Y., 201; 45 Barb., 433; 1 Redf., 110; 1 Tucker, 453; 15 Hun, 410; 3 Redf., 460; 14 Hun, 285; 56 How. Pr. R., 125; 16 Abb., N. S., 128; 1 T. & C., 457; 53 N. Y., 460; 5 Redf., 320, 376; 1 Dem., 484; 3 Dem., 160, 309; 3 Dem., 93, 385; 4 Dem., 119; 37 Hun, 225, 346; 40 Hun, 387; 66 N. Y., 377; 45 Hun, 80.

[1 R. L., 365, § 3.]

Will, when
revoked by
marriage
and birth
of issue.
16 N. Y., 9;
1 Denio, 27;
7 Paige, 97;
25 N. Y., 9;
6 T. & C.,
557; 61
Barb., 259;
16 Hun, 559;
63 N. Y.,
610.

§ 43. If, after the making of any will, disposing of the whole estate of the testator, such testator shall marry, and have issue of such marriage, born either in his life-time or after his death, and the wife or the issue of such marriage shall be living at the death of the testator, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, or in such way mentioned therein, as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation, shall be received.

Will of un-
married
woman.

§ 44. A will executed by an unmarried woman, shall be deemed revoked by her subsequent marriage.

16 N. Y., 9; 4 Johns. Ch. R., 507; 4 Hun, 215, 613; 6 T. & C., 512; 1 Tucker, 108; 40 N. Y., 408.

Bond, &c.,
to convey
property
devised,
not a revo-
cation, &c.
16 N. Y., 9;
7 Paige,
184; 27 N.
Y., 357, 384;
3 T. & C.,
317.

§ 45. A bond, agreement, or covenant, made for a valuable consideration, by a testator, to convey any property devised or bequeathed in any will previously made, shall not be deemed a revocation of such previous devise or bequest, either at law or in equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, agreement, or covenant, for a specific performance or otherwise, against the devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

Charge or
incum-
brance not
a revoca-
tion.

§ 46. A charge, or incumbrance, upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant, shall not be deemed a revocation of any will relating to the same estate, previously executed; but the devisees and

(65)

legacies therein contained, shall pass and take effect, subject to such charge or incumbrance.

§ 47. A conveyance, settlement, deed, or other act of a testator, by which his estate or interest in property, previously devised or bequeathed by him, shall be altered, but not wholly divested shall not be deemed a revocation of the devise or bequest of such property; but such devise or bequest shall pass to the devisee or legatee, the actual estate or interest of the testator, which would otherwise descend to his heirs, or pass to his next of kin; unless in the instrument by which such alteration is made, the intention is declared, that it shall operate as a revocation of such previous devise or bequest.

§ 48. But if the provisions of the instrument by which such alteration is made; are wholly inconsistent with the terms and nature of such previous devise or bequest, such instrument shall operate as a revocation thereof, unless such provisions depend on a condition or contingency, and such condition be not performed, or such contingency do not happen.

§ 49. Whenever a testator shall have a child born after the making of a last will, either in the life-time or after the death of such testator, and shall die leaving such child, so after-born, unprovided for by any settlement, and neither provided for, nor in any way mentioned in such will, every such child shall succeed to the same portion of such parent's real and personal estate as would have descended or been distributed to such child, if such parent had died intestate, and shall be entitled to recover the same portion from the devisees and legatees, in proportion to and out of the parts devised and bequeathed to them by such will. [*Thus amended by L. 1869, ch. 22.*]

§ 50. If any person shall be a subscribing witness to the execution of any will, wherein any beneficial devise, legacy, interest or appointment of any real or personal estate, shall be made to such witness, and such will cannot be proved without the testimony of such witness, the said devise, legacy, interest or appointment, shall be void, so far only as concerns such witness, or any claiming under him; and such person shall be a competent witness, and compellable to testify respecting the execution of the said will, in like manner as if no such devise or bequest had been made.

43 How., 476; 1 Tucker, 83; 13 N. Y., 93; 5 N. Y., 128; 20 Barb., 243; 3 Barb., 414; 1 Abb. Ct. App. Dec., 443; 4 Johns. R., 312; 47 Barb., 827; 67 Barb., 178; 47 Barb., 338; 4 Abb., N. S., 41; 5 Redf., 309; 1 Dem., 817; 31 Hun, 166.

[1 R. L., 367, § 12.]

§ 51. But if such witness would have been entitled to any share of the testator's estate, in case the will was not established, then so much of the share that would have descended, or have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will, and he shall recover the same of the devisees or legatees named in the will, in proportion to, and out of, the parts devised and bequeathed to them.

§ 52. Whenever any estate, real or personal, shall be devised or bequeathed to a child or other descendant of the testator, and such legatee or devisee shall die during the lifetime of the testator, leaving a child or other descendant who shall survive such testator, such devise or legacy shall not lapse, but the property so devised or be-

ART 3.

16 N. Y., 9;
26 Barb.,
418.
Convey-
ance, &c.,
when to be
deemed a
revocation.
16 Barb.,
572; 9
Barb., 50; 7
Palge, 100;
16 N. Y., 9;
23 Hun, 152.

Id.
26 Barb.,
418; 16
Barb., 579;
3 Bradf.,
418; 16 N.
Y., 9; 3
Hun, 292.

After-born
child, if un-
provided
for, to
have por-
tion of
estate.
4 Hun, 755;
3 Barb.,
243; 5
Palge, 590;
40 N. Y.,
408; 61
Barb., 298;
41 Barb.,
202; 3 Hun,
128, 756, 758;
N. Y., 555.

Devisee or
legatee
may wit-
ness will,
but devise
to him
void.

When
share of the
estate to be
saved to
such wit-
ness.

[66]

Devise in
certain
cases not to
lapse.
23 Barb.,
195; 19
Barb., 498;
4 Hill, 139;
1 Bradf.,

TITLE 2.

114; 30 N. Y., 393; 6 Lans., 54; 5 T. & C.,

Cancelling of second will, not to revive first, except, &c. 36 Barb., 76. [67, 68]

Provisions as to revocations.

5 N. Y., 312; 3 Paige, 446; 8 Dem., 541; 36 Hun, 124.

Prior wills not affected.

5 N. Y., 312; 3 Paige, 204; 4 Hill,

"Wills"

to include

codicils.

5 N. Y., 120;

5 N. Y., 123;

queathed shall vest in the surviving child or other descendant of the legatee or devisee, as if such legatee or devisee had survived the testator and had died intestate.

453; 4 Hun, 725; 12 Abb. N. C., 344; 2 Dem., 48, 51.

§ 53. If, after the making of any will, the testator shall duly make and execute a second will, the destruction, cancelling or revocation of such second will, shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive and give effect to his first will; or unless after such destruction, cancelling, or revocation, he shall duly republish his first will.

[Sections 54-68, including seven supplementary sections (63-69), inserted by L. 1830, ch. 320, were repealed by L. 1880, ch. 245.]

§ 69. The provisions of this title, in relation to the revocation of wills, shall apply to all wills made by any testator, who shall be living, at the expiration of one year, from the time this chapter shall take effect.

§ 70. The provisions of this title shall not be construed to impair the validity of the execution of any will made before this chapter shall take effect, or to affect the construction of any such will.

§ 71. The term "will," as used in this chapter, shall include all codicils, as well as wills.

[1 R. L., 368, § 20.]

L. 1860, Chap. 360 — An act relating to wills.

Persons having relatives may not devise property by will, to benevolent or other societies beyond one-half. SECTION 1. No person having a husband, wife, child or parent, shall, by his or her last will and testament, devise or bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association or corporation, in trust or otherwise, more than one-half part of his or her estate, after the payment of his or her debts (and such devise or bequest shall be valid to the extent of one-half, and no more).

43 N. Y., 440; 34 N. Y., 616; 3 Lans., 355; 2 Abb. Ct. App. Dec., 321; 4 Abb., N. S., 421; 27 Barb., 304; 1 Tucker, 235; 59 N. Y., 434; 4 Abb. N. C., 317; 3 Redf., 235; 7 Abb. N. C., 53; 19 N. Y., 327; 8 Abb. N. C., 118; 2 Abb. Ct. App. Dec., 316; 4 Dem., 473; 16 Abb. N. C., 263, note; 29 Hun, 235; 33 Hun, 411; 44 Hun, 425; 92 N. Y., 433, aff'g 27 Hun, 380; 95 N. Y., 166; 105 N. Y., 185; 5 Dem., 268.

Repeal. § 2. All laws and parts of laws inconsistent with this act are hereby repealed.

TITLE II.

Of Granting Letters testamentary and of Administration.

ART. 1.—Of granting letters testamentary.

ART. 2.—Of granting letters of administration with the will annexed, and in cases of intestacy.

ART. 3.—General provisions relating to letters testamentary and of administration; miscellaneous provisions respecting the duties of surrogates, and the recording of wills and letters.

ARTICLE FIRST.

OF GRANTING LETTERS TESTAMENTARY.

[69] SEC. 1 & 2. [Repealed.]

3. Who incompetent to serve as executors; proceedings if all be incompetent, etc.

Sec. 4. Married women entitled to letters, if husband consent; effect of such consent.

ART. 1.

5. After disability of minor, alien, etc., removed, supplementary letters to be issued.

6-14. [Repealed.]

15. Executors named in will, but not in letters, superseded till they qualify.

16. Before letters, executor not to interfere, except to pay funeral charges, etc.

17-21. [Repealed.]

22. Where letters with the will annexed are granted, will to be observed, etc.

[Section 1 was repealed by L. 1880, ch. 245.]

[Section 2 was repealed by L. 1887, ch. 460.]

§ 3. No person shall be deemed competent to serve as an executor who, at the time the will is proved, shall be: First, Incapable in law of making a contract (except married women). Second, Under the age of twenty-one years. Third, An alien not being an inhabitant of this state. Fourth, Who shall have been convicted of an infamous crime. Fifth, Who, upon proof, shall be adjudged by the surrogate to be incompetent to execute the duties of such trust by reason of drunkenness, dishonesty, improvidence or want of understanding. If any such person be named as the sole executor in any will, or if all the persons named therein as executors be incompetent, letters of administration (with the will annexed) shall be issued, as hereinafter provided in the case of all the executors renouncing.

Persons incompetent to serve as executors. When letters with the will annexed to issue.

[Thus amended by L. 1873, ch. 79.]

50 N. Y., 301; 14 N. Y., 449; 60 Barb., 59; 43 Barb., 418; 1 Tucker, 16, 94; 14 N. Y., 449; 14 Barb., 690; 3 Abb. Ct. App. Dec., 85; 5 T. & C., 101; 27 Hun, 380; 36 Hun, 124.

§ 4. No married woman shall be entitled to letters testamentary, unless her husband consent thereto, by a writing to be filed with the surrogate; and by giving such consent he shall be deemed responsible for her acts jointly with her.

[See L. 1867, ch. 782, § 2, post.]

Married women, when entitled to letters. [70] 3 Paige, 89; 39 Barb., 485.

§ 5. If the disability of a person under age, or being an alien, or a married woman, named as executor in any will, shall be removed, before the execution of such will is completed, such person shall be entitled on application, to supplementary letters testamentary, to be issued in the same manner as the original letters, and shall thereupon be authorized to join, in the execution of such will, with the persons previously appointed.

Supplementary letters, when to be issued. 9 Barb., 446; 4 Barb., 248; 5 T. & C., 101.

[Sections 6-14 were repealed by L. 1880, ch. 245.]

[71]

§ 15. Every person named in a will as executor, and not named as such in the letters testamentary, or in letters of administration with the will annexed, shall be deemed to be superseded thereby, and shall have no power or authority whatever, as such executor, until he shall appear and qualify.

Executors not named in letters not to act. 1 Tucker, 112; 19 N. Y., 455; 14 Barb., 379; 3 Barb. Ch., Robt., 608; N. Y., 309.

74; 3 Paige, 420; 7 How. Pr. R., 182; 1 How. Pr. R., 502; 2 1 Redf., 281; 5 T. & C., 101; 88

§ 16. No executor named in a will, shall, before letters testamentary are granted, have any power to dispose of any part of the estate of the testator, except to pay funeral charges, nor to interfere with such estate in any manner, further than is necessary for its preservation.

Power of executor before letters. 21 Barb., 316; 16 Wend., 579; 1 How. Pr. R., 207; 3 Abb. N. C., Hun, 520.

Hill, 444; 4 Denio, 82; 5 T. & C., 101; 1 Tucker, 112; 23 Hun, 405; 5 Redf., 181; 17 182; 18 J. & S., 231; 28 Hun, 279; 31 Hun, 285; 32

[Sections 17-21 were repealed by L. 1880, ch. 245.]

[72]

§ 22. In all cases where letters of administration with the will annexed, shall be granted, the will of the deceased shall be observed

Administration with the

TITLE 2.

will an-
nexed.
22 N. Y.,
303; 13 N.
Y., 587; 27
Y., 45; 27
N. Y., 539.

and performed; and the administrators with such will, shall have the rights and powers, and be subject to the same duties, as if they had been named executors in such will.

Barb., 292; 14 Barb., 652; 25 Wend., 234; 21 Wend., 433; 4 Sandf. S. C., 401; 33 N. Y., 363; 29 How. Pr. E., 249; 2 Robt., 609; 26 Hun, 626; 1 Redf., 232; 28 Hun, 64; 22 [1 R. L., 316, § 21.]

[73]

ARTICLE SECOND.

OF GRANTING LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED, AND IN CASES OF INTESTACY.

SEC. 23-26. [Repealed.]

27. Who entitled to letters of administration and in what order.

28. Order of preference where there are several persons in same degree.

29. Administration on estate of married woman, to be granted to husband, etc.

30 & 31. [Repealed.]

32. Certain persons declared incapable of receiving letters of administration.

33. If minor be entitled, letters to be granted to his guardian.

34. When person not entitled may be joined in letters.

35-43. [Repealed.]

[74]

[Sections 23-26 were repealed by L. 1880, ch. 245.]

Adminis-
tration in
case of
intestacy.

1 Redf., 365,

267, 281; 11

Abb., N.S.,

17; 1

Tucker,

102; 23 N.

Y., 94; 15

Barb., 308;

4 Bradf.,

13, 343; 8

Bradf., 369,

378; 3

Bradf., 304,

334, 424; 1

Bradf., 64,

100, 125, 200,

283, 495;

37 Barb.,

194; 35

Barb., 67

24 N. Y.,

418; 56

Barb., 634;

52 How.

Pr. E., 310;

13 Abb. N.

C., 414; 9

Dem., 652;

4 Dem., 250,

491; 42

Hun, 471;

44 Hun, 63;

107 N. Y.,

286.

Order of

preference

where several

in same

degree.

15 Barb.,

302; 1

Barb. Ch.,

[75]

46; 56

Barb., 634;

11 Abb.

N. S., 17;

Adminis-
tration on

estate of

married

woman, to

be granted

to husband,

&c. 13 N. Y.

207; 1 N.

§ 27. Administration in case of intestacy shall be granted to the relatives of the deceased, who would be entitled to succeed to his personal estate, if they or any of them will accept the same, in the following order: First to his widow; second, to his children; third, to the father; fourth, to the mother; fifth to the brothers; sixth to the sisters; seventh to the grandchildren; eighth, to any other next of kin who would be entitled to share in the distribution of the estate. If any of the persons so entitled be minors, administration shall be granted to their guardians. If none of the said relatives or guardians will accept the same, then to the creditors of the deceased, and the creditor first applying, if otherwise competent, shall be entitled to a preference. If no creditor apply, then to any other person or persons legally competent; but in the city of New York, the public administrator shall have preference, after the next of kin, over creditors and all other persons; and in other counties of this state, the county treasurer shall have preference, next after creditors, over all other persons; and in case of a married woman dying intestate, her husband shall be entitled to administration in preference to any other person, as hereinafter provided. [Thus amended by L. 1867, ch. 782.]

[1 R. L., 314, § 17; 445, § 3.]

§ 28. When there shall be several persons of the same degree of kindred to the intestate, entitled to administration, they shall be preferred in the following order: First, males to females; second, relatives of the whole blood to those of the half blood; third, unmarried women to such as are married; and when there are several persons equally entitled to administration, the surrogate may, in his discretion, grant letters, to one or more of such persons.

15 W. D. 20; 25 Hun, 579; 30 N. Y., 40.

§ 29. A husband, as such, if otherwise competent according to law, shall be solely entitled to administration on the estate of his wife, and shall give bond as other persons, but shall be liable as administrator, for the debts of his wife, only to the extent of the assets received by him. If he shall not take out letters of adminis-

tration on her estate, he shall be presumed to have assets in his hands, sufficient to satisfy her debts, and shall be liable therefor; and if he shall die, leaving any assets of his wife unadministered, they shall pass to his executors or administrators, as part of his personal estate, but shall be liable for her debts to her creditors, in preference to the creditors of the husband.

[1 R. L., 314, § 17.]

[Section 30 was repealed by L. 1867, ch. 782.]

[Section 31 was repealed by L. 1880, ch. 245.] Y., 286; 2 Redf., 544; 4 Dem., 253; 100

§ 32. No letters of administration shall be granted to a person convicted of an infamous crime, nor to any one incapable by law of making a contract, nor to a person not a citizen of the United States, unless such person reside within this state; nor to any person who is under twenty-one years of age; nor to any person who shall be judged incompetent by the surrogate to execute the duties of such trust, by reason of drunkenness, improvidence, or want of understanding; nor to any married woman, unless with the written consent of her husband. But with such written consent, she may administer without her husband. [Thus amended by L. 1830, ch. 320, § 18, and L. 1863, ch. 362.]

[Modified by L. 1867, ch. 782, *post*, p. 2554.]

§ 33. If any person who would otherwise be entitled to letters of administration as next of kin, or to letters of administration with the will annexed, as residuary or specific legatee, shall be a minor, such letters shall be granted to his guardian, being in all respects competent, in preference to creditors or other persons.

§ 34. Administration may be granted to one or more competent persons, although not entitled to the same, with the consent of the person entitled, to be joined with such person; which consent shall be in writing, and be filed in the office of the surrogate.

[Sections 35-43 were repealed by L. 1880, ch. 245.]

235; 2 Dem., 408; 4 Dem., 175; 30 Hun,

ART 3.
Y., 467; 16
Barb., 558;
15 Wend.,
381; 10
Paige, 419;
1 Edw., 392.
11 Paige,
87; 1
Bradf., 64;
36 How.
Pr. R.,
361; 47 N.
N. Y., 328.

Certain
persons
declared
incapable
of receiv-
ing letters
of adminis-
tration.
6 N. Y., 447;
10 Barb.,
682; 1 Barb.
Ch. 46; 15
Barb., 302;
1 Bradf.,
283; 66
Barb., 634;
1 Redf.,
335; 9 Hun,
471; 2
Dem., 413;
44 Hun. 60.

Letters,
when to be
granted to
minor.
43 Barb.,
418; 15
Barb., 302;
11 Abb., N.
171, 228.
[76]
When per-
son not
entitled
may be
joined in
letters.
1 Bradf.,
200; 1
Redf., 259,
401, 404.
[77]

L. 1878, Chap. 298—An act to legalize the acts of surrogates and officers acting as such, in granting letters of administration, and to provide for the issuing of such letters in certain cases.

Validating certain acts of surrogates. SECTION 1. The acts of any and all surrogates and other officers lawfully acting as such, in granting letters of administration upon petition verified before any person authorized to administer oaths, are hereby made and declared to be as legal, and of the same force and effect, as if such oath or affirmation had been administered by the surrogate, and an examination of the applicant had been personally made by the surrogate or person acting as such, granting such letters of administration.

27 Hun, 215.

[Section 2 was repealed by L. 1880, ch. 245.]

ARTICLE THIRD.

GENERAL PROVISIONS RELATING TO LETTERS TESTAMENTARY AND OF ADMINISTRATION; MISCELLANEOUS PROVISIONS RESPECTING THE DUTIES OF SURROGATES, AND THE RECORDING OF WILLS AND LETTERS.

Sec. 44-59. [Repealed.]

60. Unauthorized persons interfering with estates, to account, and not to retain for debts due them.

TITLE 2.

[Sections 44-59 were repealed by L. 1880, ch. 245.]

[78-81]**Executors
in their
own
wrong.****3 Hill, 226;
17 W. D.****181; 18 J. &
8, 224; 43****Hun, 350;
44 Hun, 461.**

§ 60. Every person who shall take into his possession any of the assets of any testator or intestate, without being thereto duly authorized as executor, administrator or collector, or without authority from the executor, administrator or collector, shall be liable to account for the full value of such assets, to every person entitled there- to, and shall not be allowed to retain or deduct from such assets, for any debt due to him.

[1 R. L., 313, § 13.]

L. 1851, Chap. 175—An act to provide for the election of a separate officer to perform the duties of the office of surrogate in certain counties, and to increase his powers and duties.

[Section 1 amends L. 1847, ch. 276, § 13. Section 2 will be found on p. 443, *ante*.]

Bonds, with whom to be filed. § 3. All bonds given by any executor or administrator, or any other person, which by law are required to be filed with the surrogate or in the surrogate's office of any county, shall be proved or acknowledged by the parties executing the same as deeds are now required by law to be proved or acknowledged, before the same shall be received by the surrogate or person performing the duties of surrogate.

L. 1863, Chap. 362—An act in relation to proceedings in surrogates' courts, and to the fees of surrogates, and the compensation of executors and administrators, and to a clerk for surrogates.

[Sections 1 and 2 were repealed by L. 1880, ch. 245.]

[Sections 3 and 4 amend the Revised Statutes.]

[Sections 5 and 6 were repealed by L. 1880, ch. 245.]

In what case surrogate to charge no fees. § 7. In all cases where the inventory of personal property of any testator or intestate, filed in the office of the surrogate, shall not exceed the sum of one thousand dollars, no fees for any service done or performed by the surrogate shall be charged to or received from the executor or administrator; and if the petition for letters testamentary or of administration shall allege that, in the belief of the petitioner, the said inventory will not exceed in amount the sum aforesaid, no fees shall be received until it appears from the said inventory, when filed, that the personal property does not exceed that sum; and in all cases of the appointment of guardians, where it shall appear that the application is made for the purpose of enabling the minor or minors to receive bounty, arrears of pay, or prize money, or pension due, or other dues or gratuity from the federal or state government, for the services of the parent or brother of such minor or minors in the military or naval service of the United States, no surrogate's fees shall be charged or received. [*Thus amended by L. 1866, ch. 784.*]

43 Hun, 196.

[See Code Civ. Proc., § 2567.]

[Section 8 amends the Revised Statutes.]

[Section 9 was repealed by L. 1880, ch. 245.]

[Section 10 is omitted as local.]

L. 1867, Chap. 782—An act in relation to the powers and jurisdictions of surrogates' courts.

[Section 1 was repealed by L. 1880, ch. 245.]

Married women capable of being executrixes, etc. § 2. Married women are hereby declared to be capable of acting as executrixes, administratrixes and guardians of minors, and of receiving letters testamentary, or of administration, or of guar-

dianship, as though they were single women; and their bonds, given upon the granting of such letters, shall have the same force and effect as though they were not married.

2 Dem., 1; 89 N. Y., 401; 100 N. Y., 323.

[Section 3 and 4 amend the Revised Statutes.]

Surrogates can refuse letters testamentary. § 5. Any surrogate may, in his discretion, refuse the application for letters testamentary, or letters of administration, of any person unable to read and write the English language.

[Section 6 amends the Revised Statutes.]

[Section 7-10 were repealed by L. 1880, ch. 245.]

[Section 11 amends the Revised Statutes.]

Repeal. § 12. The thirtieth section of chapter six, title two of the second part of the Revised Statutes is hereby repealed.

[Section 18 of this act is on p. 2559, *post*; section 14 is on p. 2567, *post*.]

[Section 15 was repealed by L. 1886, ch. 593.]

[Section 16 was repealed by L. 1880, ch. 245.]

TITLE III.

ART. 1.

Of the duties of Executors and Administrators in taking and returning Inventories, in the Payment of Debts and Legacies, in accounting, and in making distribution to Next of Kin.

ART. 1.—Of their duties in taking and returning inventories.

ART. 2.—Of the duties of executors and administrators, in the payment of debts and legacies.

ART. 3.—Of the duties of executors and administrators, in rendering an account, and in making distribution to the next of kin.

ARTICLE FIRST.

OF THEIR DUTIES IN TAKING AND RETURNING INVENTORIES.

Sec. 1. Appraisers of property to be appointed; their compensation.

2. Appraisal to be made by them and executor or administrator.

3. Notice of appraisal, how and on whom to be served; its contents.

4. Appraisers to take oath; to be inserted in inventory.

5. Proceedings of appraisers.

6. Assets enumerated, which go to executors.

7. Things which are not assets.

8. Rights of heirs to descendible property, not affected by section six.

9. Certain other articles not assets, to be included in inventory, in certain cases.

10. To whom such articles belong, and with whom to remain.

11. Mortgages, bonds, etc., to be particularly stated in inventory.

12. Money and bank-bills received, to be stated; if none the fact to be mentioned.

13. The appointment of a debtor executor, not to discharge debt.

14. Discharge of any debt in a will, to be deemed a specific bequest.

15. Duplicates of inventory to be made; one to be returned to surrogate.

16. Oath to be taken by executor or administrator, to be endorsed on inventory.

17-22. [Repealed.]

23. Inventory may be returned by one executor; those refusing, to forfeit their appointment.

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24. New assets discovered, to be appraised and inventoried; inventory to be returned.

SECTION 1. Upon the application of an executor or administrator, the surrogate who granted letters testamentary or of administration shall, by writing, appoint two disinterested appraisers as often as occasion may require, to estimate and appraise the personal prop-

Surrogate to appoint appraisers. 1 Tucker, 111; 3 T. & C., 492.

TITLE 3.
Compensation of.

Surrogate's clerk not to act as appraiser.

Appraisal.
 20 N. Y., 130; 16 Barb., 558; 18 How. Pr. R., 208; 37 Barb., 543; 38 N. Y., 398; 1 Redf., 278; 2 Dem., 263, 331; 3 Dem., 127; 4 Dem., 401.

Notice of appraisal.
 4 Abb., 313; 15 How. Pr. R., 184; 4 Dem., 177; 88 N. Y., 487.

Oath of appraisers.
 18 Barb., 24; 4 Dem., 402.

Proceedings.
 36 Barb., 418; 4 Dem., 402.

Assets.
 3 Dem., 129; 25 Hun., 171; 33 Hun., 263; 37 Hun., 18; 41 Hun., 186.

erty of a deceased person, and such appraisers shall be entitled to receive a reasonable compensation for their services, to be allowed by the surrogate, but not exceeding for each appraiser the sum of five dollars for each day actually employed in making an appraisal or inventory, in addition to his actual expenses necessarily incurred; the number of days' services so rendered, and the amount of such expenses to be verified by the affidavit of the appraiser performing such services, to be made and delivered to the executor or administrator before payment of such fees, and to be adjusted by the surrogate. And no clerk or employee in a surrogate's office shall act as appraiser in any matter before such surrogate. [*Thus amended by L. 1873, ch. 225.*]

§ 2. The executors and administrators of any testator or intestate, within a reasonable time after qualifying, and after giving the notice in the next section required, with the aid of appraisers so appointed by the surrogate, shall make a true and perfect inventory of all the goods, chattels, and credits of such testator, or intestate, and where the same shall be in different and distant places, two or more such inventories, as may be necessary.

[1 R. L., 311, § 1.]

§ 3. A notice of such appraisal shall be served, five days previous thereto, on the legatees and next of kin, residing in the county where such property shall be; and it shall also be posted in three of the most public places of the town. In every such notice, the time and place at which such appraisal will be made shall be specified.

§ 4. Before proceeding to the execution of their duty, the appraisers shall take and subscribe an oath, to be inserted in the inventory made by them, before any officer authorised to administer oaths, that they will truly, honestly and impartially appraise the personal property, which shall be exhibited to them, according to the best of their knowledge and ability.

[1 R. L., 311, § 2.]

§ 5. The appraisers shall, in the presence of such of the next of kin, legatees, or creditors of the testator or intestate as shall attend, proceed to estimate and appraise the property which shall be exhibited to them; and shall set down each article separately, with the value thereof in dollars and cents, distinctly, in figures, opposite to the articles respectively.

§ 6. The following property shall be deemed assets, and shall go to the executors or administrators, to be applied and distributed as part of the personal estate of their testator or intestate, and shall be included in the inventory thereof:

1. Leases for years; lands held by the deceased from year to year; and estates held by him for the life of another person:

[1 R. L., 365, § 4.]

2. The interest which may remain in the deceased at the time of his death, in a term for years, after the expiration of any estate for years therein, granted by him or any other person:

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3. The interest in lands devised to an executor for a term of years, for the payment of debts:

ART. 1.

4. Things annexed to the freehold, or to any building, for the purpose of trade or manufacture, and not fixed into the wall of a house, so as to be essential to its support:

5. The crops growing on the land of the deceased, at the time of his death:

6. Every kind of produce raised annually by labor and cultivation, excepting grass growing and fruit not gathered:

7. Rent reserved to the deceased, which had accrued at the time of his death:

[1 R. L., § 18; 443, § 27.]

8. Debts secured by mortgages, bonds, notes or bills; accounts, money, and bank bills, or other circulating medium, things in action, and stock in any company, whether incorporated or not:

9. Goods, wares, merchandise, utensils, furniture, cattle, provisions and every other species of personal property and effects, not hereinafter excepted.

34 N. Y., 348; 35 N. Y., 199; 48 N. Y., 284, 42 N. Y., 150; 1 Abb. Ct. App. Dec., 240; 9 Boaw., 411; 34 N. Y., 347; 20 N. Y., 347; 12 N. Y., 529; 11 N. Y., 498; 6 N. Y., 598; 31 Barb., 637; 26 Barb., 438; 16 Barb., 568; 8 Hill, 442; 3 Wend., 470; 10 Paige, 163; 3 Sandf. S. C., 563; 4 Bradf., 7, 245; 3 Bradf., 376, 436; 3 Bradf., 84, 179; 1 Bradf., 40, 100, 110, 154, 213, 436; 36 Barb., 418; 1 Redf., 275; 63 N. Y., 92; 3 Redf., 421; 15 Hun, 378; 3 Redf., 408; id., 302; id., 285; 77 N. Y., 158; 23 Hun, 75.

§ 7. Things annexed to the freehold, or to any building, shall not go to the executor, but shall descend with the freehold to the heirs or devisees, except such fixtures as are mentioned in the fourth subdivision of the last section.

What are not assets.
18 N. Y., 28; 1 Barb., 376; 1 Redf., 378.

§ 8. The right of an heir to any property not enumerated in the preceding sixth section, which by the common law would descend to him, shall not be impaired by the general terms of that section.

Rights of heirs.
10 Barb., 432.

§ 9. Where a man having a family shall die, leaving a widow or a minor child or children, the following articles shall not be deemed assets, but shall be included and stated in the inventory of the estate, without being appraised:

Articles to be included in inventory, but not appraised.

1. All spinning-wheels, weaving-loom, one knitting machine, one sewing-machine, and stoves put up or kept for use by his family.

Enumeration.
6 N. Y., 598; 12 Barb., 679; 6 Hill, 643; 1 Sandf. S. C., 518; 3 Bradf., 268; 46 Barb., 191; 3 Redf., 87; 3 Dem., 265, 268; 3 Dem., 72; 24 Hun, 100; 27 Hun, 54; 92 N. Y., 225; 18 Abb. N. C., 468.

2. The family bible, family pictures, and school-books, used by or in the family of such deceased person, and books not exceeding in value fifty dollars, which were kept and used as part of the family library before the decease of such person.

3. All sheep to the number of ten, with their fleeces, and the yarn and cloth manufactured from the same, one cow, two swine and the pork of such swine, and necessary food for such swine, sheep or cow for sixty days, and all necessary provisions and fuel for such widow or child or children for sixty days, after the death of such deceased person.

4. All necessary wearing apparel, beds, bedsteads and bedding, necessary cooking utensils, the clothing of the family, the clothes of the widow and her ornaments proper for her station; one table, six chairs, twelve knives and forks, twelve plates, twelve tea-cups and saucers, one sugar dish, one milk pot, one tea-pot and twelve spoons, and also other household furniture which shall not exceed one hundred and fifty dollars in value. [Thus amended by L. 1874, ch. 470.]

[L. 1824, § 2.]

TITLE 3.

Where to remain, etc.

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13 Barb., 679; 6 Hill, 643; 46 Barb., 191.

§ 10. The said articles shall remain in the possession of the widow, if there be one, during the time she shall live with, and provide for, such minor child or children. When she shall cease so to do, she shall be allowed to retain as her own, her wearing apparel, her ornaments and one bed, bedstead and the bedding for the same; and the other articles so exempted, shall then belong to such minor child or children. If there be a widow, and no such minor child, then the said articles shall belong to such widow.

[L. 1824, 32.]

Mortgages, bonds, etc.

20 N. Y., 120; 3 Dem., 307.

§ 11. The inventory shall contain a particular statement of all bonds, mortgages, notes and other securities for the payment of money, belonging to the deceased, which are known to such executor or administrator; specifying the name of the debtor in each security; the date; the sum originally payable; the endorsements thereon, if any, with their dates and the sum which, in the judgment of the appraisers, may be collectible on each security.

Money and bank bills.

20 N. Y., 120; 7 Wend., 308.

§ 12. The inventory shall also contain an account of all monies, whether in specie or bank bills, or other circulating medium, belonging to the deceased, which shall have come to the hands of the executor or administrator; and if none shall have come to his hands, the fact shall be so stated in such inventory.

Debts of executors not discharged.

53 Barb., 517; 2 T. & C., 484; 74 N. Y., 539; 59 N. Y., 140; 3 Dem., 213; 4 Dem., 107; 39 Hun, 67; 277; 89 N. Y., 1; 95 N. Y., 340; 24 Hun, 335; 45 Hun, 482.

§ 13. The naming of any person executor in a will, shall not operate as a discharge, or bequest, of any just claim, which the testator had against such executor, but such claim shall be included among the credits and effects of the deceased, in the inventory, and such executor shall be liable for the same, as for so much money in his hands, at the time such debt or demand becomes due; and he shall apply and distribute the same in the payment of debts and legacies, and among the next of kin, as part of the personal estate of the deceased.

Discharge of debts by will, invalid as to creditors.

§ 14. The discharge or bequest in a will, of any debt or demand of the testator, against any executor named in his will, or against any other person, shall not be valid as against the creditors of the deceased; but shall be construed only as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory of the credits and effects of the deceased, and shall, if necessary, be applied in the payment of his debts; and if not necessary for that purpose, shall be paid in the same manner and proportion as other specific legacies.

Inventory to be returned, &c.

26 Barb., 332; 3 Bradt., 228; 37 Barb., 342; 2 Dem., 352.

§ 15. Upon the completion of the inventory, duplicates thereof shall be made and signed by the appraisers; one of which shall be retained by the executor or administrator, and the other shall be returned to the surrogate within three months from the date of such letters.

[1 R. L., 311, § 1, L. 1821, 46.]

Oath of executor, &c.

20 N. Y., 120; 26 Barb., 332;

[85]

37 Barb., 342; 38 N.

§ 16. Upon returning such inventory, the executor or administrator shall take and subscribe an oath, before the surrogate or any officer within the state, who is authorized to take an affidavit to be used in the supreme court, stating that such inventory is in all respects just and true, that it contains a true statement of all the personal

property of the deceased, which has come to the knowledge of such executor or administrator, and particularly of all money, bank bills, and other circulating medium, belonging to the deceased, and of all just claims of the deceased against such executor or administrator, according to the best of his knowledge. Such oath shall be endorsed upon, or annexed to the inventory. [Thus amended by L. 1888, ch. 302.]

[1 R. L., 311, § 1; L. 1821, 46.]

[Sections 17-22 were repealed by L. 1880, ch. 245.]

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§ 23. Any one or more of the executors or administrators named in any letters, on the neglect of the others, may return an inventory; and those so neglecting, shall not thereafter interfere with the administration, or have any power over the personal estate of the deceased; but the executor or administrator so returning an inventory, shall have the whole administration, until the delinquent return and verify an inventory, agreeably to the provisions of this article.

Any one to return inventory.

§ 24. Whenever personal property, or assets of any kind, not mentioned in any inventory that shall have been made, shall come to the possession or knowledge of an executor or administrator, he shall cause the same to be appraised in manner aforesaid, and an inventory thereof to be returned, within two months after the discovery thereof; and the making of such inventory and return may be enforced in the same manner, as in the case of the first inventory.

New assets.

L. 1842, Chap. 157 — An act to extend the exemption of household furniture and working tools from distress for rent, and sale under execution.

[Section 1 was repealed by L. 1877, ch. 417.]

Exemption for a widow and minor children, §150. § 2. When a man having a family, shall die, leaving a widow, or minor child or children, there shall be inventoried by the appraisers, and set apart for the use of such widow, or for the use of such widow and child or children, or for the use of such child or children, in the manner now prescribed by the ninth section of title third, chapter sixth, of part second of the Revised Statutes, necessary household furniture, provisions or other personal property, in the discretion of said appraisers, to the value of not exceeding one hundred and fifty dollars, in addition to the articles of personal property now exempt from appraisal by said section.

6 Hill, 642; 6 N. Y., 597; 3 Dem., 72.

[Section 3 is on p. 2226, ante.]

L. 1867, Chap. 782 — An act in relation to the powers and jurisdictions of surrogates' courts.

Husband and children of deceased woman to have articles set apart for them. § 13. When a married woman or widow shall die, leaving her surviving a husband or a minor child or children, the same articles and personal property shall be set apart by the appraisers for the benefit of such husband or minor child or children, as is now provided by law in the case of a man dying and leaving a widow or minor children; and all articles and property set apart, in accordance with law for the benefit of a widow or widower and a minor or minors, shall be and remain the sole personal property of such widow or widower after such minor or minors shall have arrived at age. [Thus amended by L. 1887, ch. 630.]

[As to the remaining sections of this act, see the note on p. 2555, ante.]

TITLE 2.

ARTICLE SECOND.

OF THE DUTIES OF EXECUTORS AND ADMINISTRATORS, IN THE PAYMENT OF DEBTS AND LEGACIES.

- SEC. 25. When personal property to be sold, to pay debts, manner and terms of sale.
 26. Certain articles to be first sold.
 27. Order in which debts are to be paid.
 28. Preferences not to be given in payment of certain debts.
 29. Debts not due, may be paid, on deducting interest.
 30. In certain cases, preference may be given by surrogate, to rents due.
 31 & 32. [Repealed.]
 33. When executor, etc., may retain for his debt; not entitled to preference.
 34. Notice to creditors to exhibit claims may be given, its contents, etc.
 35. Upon exhibition of claims, vouchers and affidavits of claimant may be required.
 36. If claim doubted, may be submitted to reference.
 37. Proceedings on reference; report, judgment and effect thereof.
 38. [Repealed.]
 39. If suit brought upon claim not presented within six months after notice to creditors; executors, etc., not to be liable for assets paid or distributed.
 40-42. [Repealed.]
 43. Legacies not to be paid until after one year, unless otherwise directed in the will.
 44. If directed to be sooner paid, executor, etc., may require a bond; its contents.
 45. Legacies when and how to be paid; payment how enforced.
 46-51. [Repealed.]

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Personal property when and how to be sold.
 43 N. Y., 150; 34 N. Y., 348; 26 N. Y., 60; 1 Redf., 335; 49 How. Pr. R., 138; 3 Redf., 87; 26 Hun., 478; 32 Hun., 65; 36 N. Y., 348.

What to be sold first.
 43 N. Y., 158; 34 N. Y., 348; 49 How. Pr. R., 138.

Order of payment of debts.

9 Abb. N. S., 26; 20 N. Y., 120; 14 Barb., 487; 7 Barb., 379; 7 Paige, 444; 6 Paige, 21; 8 Edw., 347; 4 Abb. Pr., 273; 4 Bradf., 213, 218; 3 Bradf., 103, 213; 1 Bradf., 343; 104, 395; 1 Redf., 279; 5 Abb. N. C., 195; 5 Redf., 27, 524; 8 Dem., 297, 371; 4 Dem., 440; 9 Daly, 220; 38 N. Y., 503.

§ 25. If any executor or administrator shall discover that the debts against any deceased person, and the legacies bequeathed by him, can not be paid and satisfied without a sale of the personal property of the deceased, the same, so far as may be necessary for the payment of such debts and legacies, shall be sold. The sale may be public or private, and, except in the city of New York, may be on credit, not exceeding one year, with approved security. Such executor or administrator shall not be responsible for any loss happening by such sale, when made in good faith, and with ordinary prudence.

§ 26. In making such sales, such articles as are not necessary for the support and subsistence of the family of the deceased, or as are not specifically bequeathed, shall be first sold; and articles so bequeathed, shall not be sold, until the residue of the personal estate has been applied to the payment of debts.

§ 27. Every executor and administrator shall proceed with diligence, to pay the debts of the deceased, and shall pay the same according to the following order of classes:

1. Debts entitled to a preference, under the laws of the United States:

2. Taxes assessed upon the estate of the deceased, previous to his death:

3. Judgments docketed, and decrees enrolled, against the deceased, according to the priority thereof, respectively:

4. All recognizances, bonds, sealed instruments, notes, bills and unliquidated demands and accounts.

31 N. Y., 360; 19 Abb. Pr., 1; 15 Abb. Pr., 329; 42 N. Y., 30; 56 Barb., 265; 10 Bosw., 164, 395; 1 Redf., 279; 5 Abb. N. C., 195; 5 Redf., 27, 524; 8 Dem., 297, 371; 4 Dem., 440; 9 Daly, 220; 38 N. Y., 503.

§ 28. No preference shall be given in the payment of any debt, over other debts of the same class, except those specified in the third class; nor shall a debt due and payable, be entitled to preference over debts not due; nor shall the commencement of a suit for the recovery of any debt, or the obtaining a judgment thereon against the executor or administrator, entitle such debt to any preference over others of the same class.

ART. 2.

Certain prefer-
ences abol-
ished.
7 Barb.,
379; 4 Abb.
Pr., 270; 18
Wend., 667;
17 Wend.,
580; 19 Abb.
Pr., 1; 63
Dem., 449.

N. Y., 612; 2 Dem., 219; 3 Dem., 70; 4 Dem., 449.

§ 29. Debts not due, may be paid by an executor or administrator, according to the class to which they may belong, after deducting a rebate of legal interest upon the sum paid, for the time unexpired.

Debts not
paid.
3 Redf., 214.

§ 30. Preference may be given by the surrogate, to rents due or accruing, upon leases held by the testator or intestate, at the time of his death, over debts of the fourth class, whenever it shall be made to appear to his satisfaction, that such preference will benefit the estate of such testator or intestate.

Rents.
6 Lans.,
174, 438; 10
Bosw., 164.

[Sections 31 and 32 were repealed by L. 1880, ch. 245.]

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§ 33. No part of the property of the deceased shall be retained by an executor or administrator, in satisfaction of his own debt or claim, until it shall have been proved to, and allowed by, the surrogate; and such debt or claim shall not be entitled to any preference over others of the same class.

Executors,
etc., re-
taining.

3 Hun, 458;
1 Tucker,
149, 478; 4
Hun, 196;
5 T. & C.,
69; 30 Hun,
N. Y., 136.

650; 6 Paige, 167; 2 Bradf., 116; 1 Redf., 223; 59 N. Y., 140; 23 Hun, 251; 5 Redf., 14,
186; 89 N. Y., 352; 93 N. Y., 484; 96 N. Y., 92; 85

§ 34. Any executor or administrator, at any time, at least six months after the granting of the letters testamentary or of administration, may insert a notice once in each week for six months, in a newspaper printed in the county, and in so many other newspapers, as the surrogate may deem most likely to give notice to the creditors of the deceased, requiring all persons having claims against the deceased, to exhibit the same with the vouchers thereof, to such executor or administrator, at the place of his residence or transaction of business, to be specified in such notice, at or before the day therein named, which shall be at least six months from the day of the first publication of such notice.

Notice to
creditors.

1 Abb. Ct. App. Dec., 541; 9 Bosw., 692; 3 Abb., N. S., 208; 59 N. Y., 533; 43 N. Y.,
524; 4 Hun, 757; 81 Barb., 204; 58 Barb., 529; 3 Lans., 26; 6 N. Y., 221; 25 Barb.,
123; 19 Barb., 155; 9 Barb., 386; 1 Barb., 523; 6 Hill, 387; 3 Hill, 37; 1 Denio,
276; 23 Wend., 478; 23 Wend., 571; 4 Abb. Pr., 186, 378; 2 Duer, 180; 4 Bradf.,
164; 2 Bradf., 1; 1 Bradf., 193; 47 Barb., 415; 18 How. Pr. E., 179; 77 N. Y., 294;
79 N. Y., 129; 16 Abb. N. C., 56, note; 96 N. Y., 348.

§ 35. Upon any claim being presented against the estate of any deceased person, the executor or administrator may require satisfactory vouchers in support thereof, and also the affidavit of the claimant that such claim is justly due, that no payments have been made thereon, and that there are no offsets against the same to the knowledge of such claimant; which oath may be taken before any justice of the peace, or other officer authorised to administer oaths.

Vouchers,
etc., may
be re-
quired.

32 Barb., 356; 26 Barb., 334; 25 Barb., 123; 1 Barb., 523; 1 Barb. Ch., 301; 6 Hill, 339;
3 Hill, 37; 4 Abb. Pr., 136; 1 Bradf., 366; 3 Daly, 44; 6 Lans., 489; 9 Bosw., 683; 2
Redf., 349; id., 137; id., 15; 9 Abb. Pr., 208; 2 Dem., 17; 32 Hun, 56; 88 N. Y., 503.

§ 36. If the executor or administrator doubt the justice of any claim so presented, he may enter into an agreement, in writing, with

Reference
to settle
claims.

TITLE 3.

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the claimant, to refer the matter in controversy to three disinterested persons, or to a disinterested person, to be approved by the surrogate, and upon filing such agreement and approval of the surrogate in the office of the clerk of the supreme court in the county in which the parties, or either of them, reside, a rule shall be entered by such clerk, either in vacation or term, referring the matter in controversy to the person or persons so selected. [*Thus amended by L. 1859, ch. 261.*]

45 N. Y., 806; 4 Abb. Ct. App. Dec., 430; 3 Daly, 244; 9 Abb., N. S., 208; 33 Barb., 356; 30 Barb., 111; 29 Barb., 351; 25 Barb., 133; 10 Barb., 312; 9 Barb., 338; 1 Barb., 523; 12 Abb. Pr., 79; 4 Abb. Pr., 136; 30 How. Pr. R., 60; 17 How. Pr. R., 24; 16 How. Pr. R., 314; 14 How. Pr. R., 511; 9 How. Pr. R., 349, 434; 6 How. Pr. R., 77; 6 Hill, 388; 2 Duer, 160; 16 Wend., 479; 43 Barb., 129; 41 Barb., 613; 24 How. Pr. R., 88; 17 Abb. Pr., 375; 16 Abb. N. C., 310; 1 Dem., 212; 2 Dem., 17; 16 J. & S., 470; 60 N. Y., 106; 33 Hun, 66; 40 Hun, 74; 41 Hun, 9; 88 N. Y., 453; 102 N. Y., 569; 43 Hun, 164; 45 Hun, 401.

Proceed-
ings.

§ 37. The referees shall thereupon proceed to hear and determine the matter, and make their report thereon to the court in which the rule for their appointment shall have been entered. The same proceedings shall be had in all respects, the referees shall have the same powers, be entitled to the same compensation, and subject to the same control, as if the reference had been made in an action in which such court might by law, direct a reference; and the court may set aside the report of the referees, or appoint others in their places, and may confirm such report, and adjudge costs, as in actions against executors; and the judgment of the court thereupon shall be valid and effectual in all respects, as if the same had been rendered in a suit commenced by the ordinary process.

33 Barb., 356; 10 Barb., 312; 4 Abb. Pr., 136; 14 How. Pr. R., 509, 511; 6 How. Pr. R., 77; 4 How. Pr. R., 124; 13 Wend., 456; 10 Wend., 601; 7 Wend., 522; 37 Barb., 223; 24 How. Pr. R., 404; 14 Abb. Pr., 86; 45 N. Y., 846; 53 Barb., 490; 44 How. Pr. R., 25; 9 Abb., N. S., 208; 18 Hun, 105; 23 Hun, 249; id., 393; 81 N. Y., 629; 13 Abb. N. C., 373; 15 Abb. N. C., 455; 16 Abb. N. C., 320; 4 Dem., 180, 517; 27 Hun, 306; 33 Hun, 54, 481; 40 Hun, 74; 102 N. Y., 597; 108 N. Y., 680; 43 Hun, 413.

[Section 38 was repealed by L. 1880, ch. 245.]

Executors,
&c., not lia-
ble for cer-
tain assets.

§ 39. In case any suit shall be brought upon a claim, which shall not have been presented to the executor or administrator of a deceased person, within six months from the first publication of such notice, as hereinbefore directed, such executor or administrator shall not be chargeable for any assets or monies, that he may have paid in satisfaction of any claims of an inferior degree or of any legacies, or in making distribution to the next of kin, before such suit was commenced. [*Thus amended by L. 1880, ch. 245.*]

43 N. Y., 524; 26 Barb., 334; 16 Barb., 294; 4 Abb. Pr., 273, 313; 15 How. Pr. R., 184; 13 How. Pr. R., 284; 25 Wend., 416; 27 Wend., 569; 2 Duer, 160; 1 Bradf., 485; 6 Lans., 489; 9 Bosw., 604; 1 Robt., 426; 9 Abb., N. S., 208; 2 Abb., N. S., 120; 10 Bosw., 305; 42 Hun, 164.

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[Sections 40-42 were repealed by L. 1880, ch. 245.]

Legacies,
when to be
paid.

§ 43. No legacies shall be paid by any executor or administrator, until after the expiration of one year from the time of granting letters testamentary or of administration, unless the same are directed by the will to be sooner paid.

12 N. Y., 474; 4 Bradf., 129; 2 Bradf., 74; 1 Bradf., 356; 31 How. Pr. R., 179; 19 Abb. Pr., 210; 36 N. Y., 23; 1 Redf., 415; 6 Redf., 419; 1 Dem., 493; 3 Dem., 151, 446; 23 Hun, 503.

Bond.
9 How. Pr.
R., 434; 5
Dem., 458.

§ 44. In case a legacy is directed to be sooner paid, the executor or administrator may require a bond, with two sufficient sureties, conditioned, that if any debts against the deceased shall duly appear, and which there shall be no other assets to pay, and there shall be no other

assets to pay other legacies, or not sufficient, that then the legatee shall refund the legacies so paid, or such rateable proportion thereof, with the other legatees, as may be necessary for the payment of the said debts, and the proportional parts of such other legacies, if there be any, and the costs and charges incurred by reason of the payment to such legatee; and that if the probate of the will, under which such legacy is paid, shall be revoked, or the will declared void, then that such legatee shall refund the whole of such legacy, with interest, to the executor or administrator entitled thereto.

[1 R. L., 314, § 18.]

§ 45. After the expiration of one year from the granting of any letters testamentary or of administration, the executors or administrators shall discharge the specific legacies bequeathed by any will, and pay the general legacies, if there be assets; and if there be not sufficient assets, then an abatement of the general legacies shall be made in equal proportions. Such payment may be enforced by the surrogate in the same manner as the return of an inventory, as herein before provided; and also by a suit on the bond of such executor or administrator, whenever directed by the surrogate.

[Sections 46 to 51 repealed by L. 1886, ch. 358.]

L. 1847, Chap. 80—An act to authorize executors and administrators to compromise and compound debts due to their testators, or intestates.

Debts may be compromised, or compounded. SECTION 1. Executors and administrators may be authorized by the surrogate, or the officer authorized to perform the duties of surrogate, in the county where their letters testamentary, or of administration were issued, on application, and good and sufficient cause shown therefor, and on such terms as said surrogate or officer shall approve, to compromise or compound any debt or claim, or to sell at public vendue, on such notice of sale as said surrogate or officer may prescribe, any uncollectible, stale or doubtful debt or claim, belonging to the estate of their testator or intestate. [*Thus amended by L. 1888, ch. 571.*]

21 N. Y., 184; 1 Hun, 73; 6 T. & C., 211; 16 Abb. Pr., 23; 4 Hun, 7; 8 Hun, 458.

Saving clause. § 2. Nothing in this act contained shall prevent any party, interested in the final settlement of said estate, from showing, on the final settlement of the accounts of said executor or administrator, that such debt or claim was fraudulently, or negligently compromised or compounded.

L. 1875, Chap. 542—An act to provide for the apportionment of rents, annuities, dividends and other payments.

Rule of apportionment. SECTION 1. All rents reserved on any lease granted after the passing of this act, and all annuities, dividends and other payments of every description, made payable or becoming due at fixed periods under any instrument executed after the passing of this act, or (being a last will and testament) that shall take effect after the passing of this act, shall be apportioned, so that on the death of any person interested in any such rents, annuities, dividends or other payments as aforesaid, or in the estate or fund from or in respect of which the

same shall issue or be derived, or on the determination by any other means whatever of the interest of any such person, he or she, and his or her executors, administrators or assigns shall be entitled to a proportion of such rents, annuities, dividends and other payments, according to the time which shall have elapsed from the commencement or last period of payment thereof respectively (as the case may be), including the day of the death of such person, or of the determination of his or her interest, all just allowances and deductions on account of charges on such rents, annuities, dividends and other payments being made.

13 Hun, 147; 65 How. Pr., 81; 67 How. Pr., 161; 10 Abb. N. C., 396; 4 Dem., 156, 404; 29 Hun, 200.

Remedies for recovering apportionments. § 2. Every such person, his or her executors, administrators and assigns shall have the same remedies at law and in equity for recovering such apportioned parts of the said rents, annuities, dividends and other payments when the entire amount, of which such apportioned parts shall form part, shall become due and payable and not before, as he or she or they would have had for recovering and obtaining such entire rents, annuities, dividends and other payments, if entitled thereto; but so that the persons liable to pay rents reserved by any lease or demise, and the lands, tenements and hereditaments comprised therein, shall not be resorted to for such apportioned parts as aforesaid, but the entire rents, of which such apportioned parts form parts, shall be collected and recovered by the person or persons, who, if this act had not passed, would have been entitled to such entire rents; and such portions shall be recoverable from such person or persons by the parties entitled to the same under this act in any action or suit at law or in equity.

When act shall not apply. § 3. This act shall not apply to any case in which it shall be expressly stipulated that no apportionment shall be made, or to any sums made payable in policies of insurance of any description.

TITLE 2.

ARTICLE THIRD.

OF THE DUTIES OF EXECUTORS AND ADMINISTRATORS, IN RENDERING AN ACCOUNT, AND IN MAKING DISTRIBUTION TO THE NEXT OF KIN.

SBC. 52-56. [Repealed.]

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57. To be charged for increase of property and allowed for decrease.

58. Rate of commission to be allowed executors, etc., besides their expenses.

59-74. [Repealed.]

75. Order of distribution of personal estate of intestates, etc., among his relatives.

76 & 77. Advancement of any child to be deducted from his portion.

78. Certain acts not to be deemed an advancement.

79. Preceding sections not to apply to estates of married women.

80-83. [Repealed.]

84. This title not to apply to public administrator in New York.

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[Sections 52-56 were repealed by L. 1880, ch. 245.]

Increase and decrease of property. 4 Abb. Pr., 278; 1 Bradf., 248; 821; 1 Redf., 266. Commissions on sums received and paid.

§ 57. No profit shall be made by executors or administrators, by the increase, nor shall they sustain any loss, by the decrease, without their fault, of any part of the estate; but they shall account for such increase, and shall be allowed for such decrease, on the settlement of their accounts.

§ 58. On the settlement of the account of an executor or administrator, the surrogate shall allow to him for his service, and if there be more than one, shall apportion among them, according to the services rendered by them respectively, over and above his or their expenses,

For receiving and paying out all sums of money not exceeding one thousand dollars, at the rate of five dollars per cent.

For receiving and paying out any sums exceeding one thousand dollars, and not amounting to ten thousand dollars, at the rate of two dollars and fifty cents per cent.

For all sums of above ten thousand dollars at the rate of one dollar per cent. And, in all cases, such allowance shall be made for their actual and necessary expenses as shall appear just and reasonable.
[*Thus amended by L. 1863, ch. 362, and L. 1880, ch. 245.*]

4 Abb. Pr., 71; Hopk., 37; 4 Bradf., 129; 3 Bradf., 424; 1 Bradf., 198, 248, 335; 1 Tucker, 130; 41 N. Y., 147; 41 Barb., 253; 31 How. Pr. E., 59; 6 N. Y., 432; 26 Barb., 300; 25 Barb., 219; 29 Barb., 91; 7 Barb., 388; 3 Denio, 576; 2 Paige, 288; 53 N. Y., 263; 67 N. Y., 343; 4 Abb. N. C., 317; 18 Hun, 16; 2 Redf., 406; id., 333; id., 819; id., 405; id., 247; id., 255; id., 501; 18 Hun, 358; id., 308; 16 Abb., N. S., 457; 3 Redf., 316; 78 N. Y., 535; 15 Abb. N. C., 199; 6 Redf., 217, 450, 570, 601; 1 Dem., 185, 191, 244, 296, 337, 357; 2 Dem., 141, 211, 290, 498; 3 Dem., 72, 173, 290, 330, 511, 589; 4 Dem., 1, 333, 387, 450, 463, 687; 24 Hun, 109, 511, 526; 31 Hun, 119; 36 Hun, 473; 41 Hun, 497; 89 N. Y., 139; 96 N. Y., 108; 98 N. Y., 627; 101 N. Y., 451.

[Sections 59-74 were repealed by L. 1880, ch. 245.]

[94-98]

Order of
distribu-
tion.

§ 75. Where the deceased shall have died intestate, the surplus of his personal estate remaining after payment of debts; and where the deceased left a will, the surplus remaining after the payment of debts and legacies, if not bequeathed, shall be distributed to the widow, children, or next of kin of the deceased, in manner following:

1. One-third part thereof to the widow, and all the residue by equal portions among the children, and such persons as legally represent such children, if any of them shall have died before the deceased:

2. If there be no children, nor any legal representatives of them, then one moiety of the whole surplus shall be allotted to the widow, and the other moiety shall be distributed to the next of kin of the deceased, entitled under the provisions of this section:

3. If the deceased leave a widow, and no descendant, parent, brother or sister, nephew or niece, the widow shall be entitled to the whole surplus; but if there be a brother or sister, nephew or niece, and no descendant or parent, the widow shall be entitled to a moiety of the surplus as above provided, and to the whole of the residue where it does not exceed two thousand dollars; if the residue exceed that sum, she shall receive, in addition to her moiety, two thousand dollars; and the remainder shall be distributed to the brothers and sisters, and their representatives:

4. If there be no widow, then the whole surplus shall be distributed equally to and among the children, and such as legally represent them:

5. In case there be no widow, and no children, and no representatives of a child, then the whole surplus shall be distributed to the next of kin, in equal degree to the deceased, and their legal representatives:

6. If the deceased shall leave no children, and no representatives of them, and no father, and shall leave a widow and a mother, the moiety not distributed to the widow shall be distributed in equal shares to his mother, and brothers and sisters, or the representatives of such brothers and sisters; and if there be no widow, the whole surplus shall be distributed in like manner to the mother, and to

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TITLE 3. the brothers and sisters, or the representatives of such brothers and sisters :

7. If the deceased leave a father, and no child or descendant, the father shall take a moiety, if there be a widow, and the whole, if there be no widow :

8. If the deceased leave a mother, and no child, descendant, father, brother, sister, or representative of a brother or sister, the mother, if there be a widow, shall take a moiety ; and the whole, if there be no widow. And if the deceased shall have been an illegitimate and have left a mother, and no child, or descendant, or widow, such mother shall take the whole and shall be entitled to letters of administration in exclusion of all other persons, in pursuance of the provisions of this chapter. And if the mother of such deceased shall be dead, the relatives of the deceased on the part of the mother shall take in the same manner as if the deceased had been legitimate, and be entitled to letters of administration in the same order : [*The foregoing subd. thus amended by L. 1845, ch. 236.*]

9. Where the descendants, or next of kin of the deceased, entitled to share in his estate, shall be all in equal degree to the deceased, their shares shall be equal :

10. When such descendants, or next of kin, shall be of unequal degrees of kindred, the surplus shall be apportioned among those entitled thereto, according to their respective stocks ; so that those who take in their own right, shall receive equal shares, and those who take by representation, shall receive the share to which the parent whom they represent, if living, would have been entitled :

11. No representation shall be admitted among collaterals, after brothers' and sisters' children :

12. Relatives of the half-blood, shall take equally with those of the whole blood in the same degree ; and the representatives of such relatives, shall take in the same manner as the representatives of the whole blood :

13. Descendants, and next of kin of the deceased, begotten before his death, but born thereafter, shall take in the same manner, as if they had been born in the life time of the deceased, and had survived him.

24 N. Y., 418; 30 N. Y., 120; 15 How. Pr. R., 183; 4 Abb. Pr., 312; 8 Paige, 578; 5 Paige, 316; 4 Paige, 538; 4 Bradf., 28, 161; 3 Bradf., 277, 415, 433; 2 Bradf., 349; 1 Bradf., 126, 300, 465; 43 Barb., 152; 1 Barb. Ch., 336, 455; 3 Lans., 578; 55 N. Y., 363; 15 How. Pr. R., 183; 51 How. Pr. R., 64; 59 N. Y. 434; 11 Hun, 344; 17 Hun, 457; 14 Hun, 551; 2 Redf., 139; 2 Dem., 394; 4 Dem., 131, 353, 436, 545; 33 Hun, 363; 36 Hun, 391; 37 Hun, 152, 254; 38 Hun, 417; 68 N. Y., 487; 46 Hun, 555.

[1 R. L., 313, § 16.]

Advancement.

61 Barb., 297; 4 Hun, 758; 31 Barb., 533;

4 Abb. Pr. 3; 70 N. Y., 612; 18 Hun, 317;

11 Hun, 523; 4 Hun, 609; 2 Redf., 465; 10 Hun, 614;

18 Hun, 319; 68 N. Y., 108; 3 Redf., 23 ;

79 N. Y., 246; 23 Hun, 299; 4 Dem., 540; 36 Hun, 382; 37 Hun, 246.

§ 76. If any child of such deceased person shall have been advanced by the deceased, by settlement or portion of real or personal estate, the value thereof shall be reckoned with that part of the surplus of the personal estate, which shall remain to be distributed among the children ; and if such advancement be equal or superior to the amount, which, according to the preceding rules, would be distributed to such child, as his share of such surplus and advancement, then such child and his descendants shall be excluded from any share in the distribution of such surplus.

[1 R. L., 313, § 16.]

23 ; 79 N. Y., 246; 23 Hun, 299; 4 Dem., 540; 36 Hun, 382; 37 Hun, 246.

§ 77. But if such advancement be not equal to such amount, such child, or his descendants, shall be entitled to receive so much only, as shall be sufficient to make all the shares of all the children, in such surplus and advancement, to be equal, as near as can be estimated.

ART. 2.

Id.
61 Barb.,
297; 4
Dem., 540.

[1 R. L., 818, § 16.]

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§ 78. The maintaining or educating, or the giving of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement, within the meaning of the two last sections; nor shall those sections apply in any case where there shall be any real estate of the intestate, to descend to his heirs.

Id.
31 Barb.,
522; 28
Barb., 636;
10 Barb., 68;
72; 4 Abb.
Pr. 3; 61
Barb., 297.

§ 79. The preceding provisions respecting the distribution of estates shall apply to the personal estates of married women dying, leaving descendants them surviving; and the husband of any such deceased married woman shall be entitled to the same distributive share in the personal estate of his wife to which a widow is entitled in the personal estate of her husband, by the provisions of this chapter, and no more. [Thus amended by L. 1867, ch. 782.]

Exception.
28 Barb.,
355; 1
Bradf., 64;
100 N. Y.,
336.

[1 R. L., 814, § 17.]

[Sections 80-83 were repealed by L. 1880, ch. 245.]

§ 84. The provisions in this title contained, shall not be applicable to any letters testamentary or of administration, granted to the public administrator in the city of New York, nor in any respect to the said public administrator.

Limitation
of title.

L. 1864, Chap. 71—An act in relation to special administrators or collectors of the goods of deceased persons.

[Sections 1-11 were repealed by L. 1880, ch. 245.]

Interest to be paid over. § 12. All interest received by any special administrator, on any moneys which may come to his hands, shall be accounted for and paid over by him in the same manner as the principal sum in his hands.

L. 1867, Chap. 782—An act in relation to the powers and jurisdictions of surrogates' courts.

Time of rendering account. § 14. An executor or administrator, after the expiration of one year from the date of his appointment, may render his final account before the surrogate, pursuant to the provisions of article third, title third, chapter sixth of the second part of the Revised Statutes, and the same proceedings and decree may be had thereon on such application and accounting, as though the account had been rendered at the expiration of eighteen months from the grant of letters testamentary or of administration.

[Although this section has not been expressly repealed, it is, doubtless, superseded by Code Civ. Proc., § 2729. As to the remaining sections of the act of 1867, see the note on p. 2555, ante.]

TITLE 4.

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TITLE IV.

Of the Powers and Duties of Executors and Administrators, in Relation to the Sale and Disposition of the real Estate of their Testator or Intestate.

SEC. 1-54. [Repealed.]

55. Sales of real estate made under a will, by one or more of several executors, when valid.

56 & 57. [Repealed.]

58. Penalty for selling real estate contrary to foregoing provisions.

59-75. [Repealed.]

[Sections 1-47 were repealed by L. 1880, ch. 245.]

[Section 48 was repealed by L. 1837, ch. 460.]

[Sections 49-54 were repealed by L. 1880, ch. 245.]

Sales by
one of sev-
eral execu-
tors.

19 N. Y.

455; 1 N. Y.,

249; 21

Wond.,

433; 15 id.,

610; 2

Paige; 197;

1 Redf., 284;

1 Barb.

Ch., 559; 4

Sandf., 401;

45 Barb.,

239; 5 T. &

C., 254; 3

Hun., 51; 74

N. Y., 539;

25 N. Y., 7.

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Penalty for

illegal

sales.

1 Barb.

Ch., 87.

§ 55. Where any real estate or any interest therein, is given or devised by any will legally executed, to the executors therein named, or any of them, to be sold by them or any of them, or where such estate is ordered by any last will to be sold by the executors, and any executor shall neglect or refuse to take upon him the execution of such will, then all sales made by the executor or executors, who shall take upon them the execution of such will, shall be equally valid, as if the other executors had joined in such sale.

[1 R. L., 366, § 11.]

[Section 56 was repealed by L. 1835, ch. 264, and by L. 1837, ch. 460.]

[Section 57 was repealed by L. 1880, ch. 245.]

§ 58. Any executor or administrator, or other person, appointed as herein directed, who shall fraudulently sell any real estate of his testator or intestate contrary to the foregoing provisions, shall forfeit double the value of the land sold, to be recovered by the person entitled to an estate of an inheritance therein.

[1 R. L., 452, § 25.]

[111-112] [Sections 59-75 were repealed by L. 1880, ch. 245.]

L. 1883, Chap. 65—An act in relation to sales of real estate made and to be made by executors under authority given them by will.

Sales may be private or public. SECTION 1. Sales of real estate situate in the city and county of New York, or at any other place within the state of New York, made by executors in pursuance of an authority given by any last will, unless otherwise directed in such will, may be public or private and on such terms as in the opinion of the executor shall be most advantageous to those interested therein.

Certain former sales legalized. § 2. All such sales made since the first day of September, eighteen hundred and eighty, are hereby ratified and confirmed and declared to be as valid in every respect as if section one of this act had been in force on and at all times since said first day of September, eighteen hundred and eighty.

Act not to invalidate pending suits, etc. § 3. This act shall not prejudice or invalidate any suit or proceeding already commenced and now pending to set aside any private sale made by any executor since said first day of September, eighteen hundred and eighty.

Repeal. § 4. All acts and parts of acts inconsistent herewith are hereby repealed.

TITLE V.

TITLE 5.

Of the Rights and Liabilities of Executors and Administrators.

- SEC. 1. Executors, etc., not to be liable on certain promises, unless made in writing.
 2. Actions upon contract may be brought by and against executors.
 3. Administrators entitled to same actions and subject to same liabilities as executors.
 4. When actions for trespass may be maintained by executors, etc.
 5. When executors, etc., liable to actions of trespass.
 6. Executors and administrators of executors, etc., when liable.
 7-22. [Repealed.]
 23. Provisions of this chapter to extend to one of several executors, etc., and to executrix, etc.
 24. [Repealed.]

SECTION 1. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate, out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, be in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorised.

Liability of
executors,
&c., on
promises.
22 Hun, 441.

§ 2. Actions of account, and all other actions upon contract, may be maintained by and against executors, in all cases in which the same might have been maintained, by or against their respective testators.

Actions by
and against
executors.
5 Wend.,
318; 19
Barb., 21;
N. Y., 434.

§ 3. Administrators shall have actions to demand and recover the debts due to their intestate, and the personal property and effects of their intestate; and shall answer and be accountable to others to whom the intestate was holden or bound, in the same manner as executors.

Adminis-
trators'
rights and
liabilities.
1 Redf.,
278.

§ 4. Executors and administrators shall have actions of trespass against any person who shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods of their testator or intestate in his life time. They may also maintain actions for trespass committed on the real estate of the deceased in his life time.

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Trespass
by execu-
tors, &c.

37 Hun, 194; 13 N. Y., 334; 28 Barb., 607; 19 Barb., 471; 16 How. Pr. R., 279; 25 How. Pr. R., 289; 3 T. & C., 62; 13 Abb., N. S., 290.

§ 5. Any person, or his personal representatives, shall have actions of trespass against the executor or administrator of any testator or intestate, who in his life time shall have wasted, destroyed, taken or carried away, or converted to his own use the goods or chattels of any such person, or committed any trespass on the real estate of any such person.

Trespass
against ex-
ecutors, &c.
19 Barb.,
471; 5 Abb.
Pr., 364; 26
Barb., 598;
13 Abb.
Pr., 301; 44
How. Pr.
R., 292.

§ 6. The executors and administrators of every person, who, as

Liability of

TITLE 6.
executors,
&c.
2 Abb., N.
S., 431; 92
N.Y., 40.
[115-117]

executor, either of right or in his own wrong, or as administrator, shall have wasted or converted to his own use, any goods, chattels, or estate, of any deceased person, shall be chargeable in the same manner, as their testator or intestate would have been, if living.

[Sections 7-22, including the duplicate § 19 (inserted by L. 1830, ch. 320), were repealed by L. 1880, ch. 245.]

Applica-
tion of this
chapter.

§ 23. All the provisions contained in this chapter, or in any of the statutes of this state, relative to executors and administrators, shall apply and extend to a single executor or administrator, and to an executrix or administratrix.

[Section 24 was repealed by L. 1880, ch. 245.]

TITLE VI.

Of Public Administrators.

ART. 1.—Of the public administrator in the city of New York.

ART. 2.—Of public administrators in the several counties of this state, other than the county of New York.

[Supplementary Article.]

ART. 2A.—Of the public administrator in Kings county.]

ARTICLE FIRST.

OF THE PUBLIC ADMINISTRATOR IN THE CITY OF NEW YORK.

- Sec. 1.** How appointed, and the tenure of his office.
2. Oath of office to be taken, and bond to be executed by him.
3. His commissions, how accounted for and paid; his salary.
4. Cases in which he is authorised to act.
5. Authority not to extend to certain cases.
6. In certain cases, not to interfere without order of surrogate.
7. Upon what proof, order to be granted.
8. When subpoena to be issued by surrogate, to discover concealed effects.
9. If surrogate be absent, certain other officers may issue subpoena.
10. Subpoena how served and enforced.
11. Witness appearing, to be sworn and examined.
12. When warrant to issue, to seize effects concealed or withheld.
13. Warrant may be stayed, by giving a bond; its conditions.
14. Duty of health officer respecting effects at the quarantine.
15. When perishable property taken by public administrator may be sold.
16. When to give notice of application for letters of administration.
17. Notice how to be served and published.
18. Persons interested may appear and contest the granting of letters.
19. When letters to be granted to executor, or widow, or relative.
20. Upon granting such letters, authority of public administrator to cease.
21. Previous expenses to be deducted from assets, and balance to be paid to executor.
22. If there be not sufficient assets to pay expenses, to be paid by executor, etc.
23. When letters of administration to be granted to public administrator.
24. In what cases public administrator to give notice that he will administer.
25. How such notice is to be served and published.
26. Affidavit of having undertaken administration, etc., to be filed.
27. Public administrator from thenceforth to administer on the estate.
28. Powers of public administrator before letters granted or affidavit filed.
29. In certain cases, notices to be served on foreign consuls.
30. If lawful executor, etc., appear, assets to be delivered to him, after deducting expenses.
31 & 32. Cases in which powers of public administrator shall be superseded.

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SAC. 33. When so superseded, to deliver over assets, after making certain deductions.

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31. Suits commenced by public administrator, may be continued by his successor.

35. The rights and powers of public administrator on any estate, enumerated.

36. To deposit monies received by him in certain bank.

37. Monies deposited, how to be drawn out.

38. Advances, not exceeding fifty dollars, may be made to relatives.

39. Account of public administrator to be annually exhibited on oath.

40. Account to be published in New-York and in state paper.

41. Penalty for not accounting, or not publishing account.

42. Corporation of New-York to be responsible for conduct of public administrator.

43. And for monies received and stock transferred; remedy of persons aggrieved.

44. On resignation, etc., of public administrator, papers, etc., to be delivered to his successor.

45. Keepers of boarding-houses, etc., to report death of transient persons; penalty for neglect.

46. Penalty not to be recovered without proof of notice of last section.

SECTION 1. The mayor, aldermen and commonalty of the city of New York, in common council convened, from time to time, and as often as a vacancy in the office shall occur, may appoint a competent person to be the public administrator in the city of New York, who shall hold his office during the pleasure of the said common council.¹

How appointed,
etc.
4 Sandf., 1;
4 Robt., 500.

§ 2. Before entering upon the duties of his office, the person so appointed shall take the oath prescribed by the Constitution, and shall execute a bond, with such sureties as shall be approved by the mayor or recorder of the said city, to the mayor, aldermen and commonalty thereof, in the penal sum of ten thousand dollars, conditioned for the faithful discharge of all duties enjoined on him by law, and particularly, that he will account for, and pay over, all monies and property, that may come to his hands as such administrator, according to law.

Oath and bond.

§ 3. The public administrator shall retain a commission, over and above all expenses, upon all monies that shall come into his hands, at the rate of five dollars upon the hundred dollars, upon all sums received from any one estate, not exceeding two thousand five hundred dollars; and upon all sums so received, exceeding that sum, at the rate of two dollars and fifty cents upon every hundred dollars; which sums may be so retained in preference to any debts or claims, excepting funeral charges. The monies so retained shall be accounted for, and paid by him, into the treasury of the city of New York. He shall be allowed and paid quarterly, such salary for his services, as the common council of the city shall prescribe, not less than one thousand two hundred and fifty dollars annually.

Commissions and salary.
42 N. Y., 354; 7 Hun, 309.

§ 4. In the right of his office, he shall have authority to collect and take charge of the goods, chattels, personal estate, and debts, of persons dying intestate, and for that purpose, to maintain suits as public administrator, as any executor might by law, in the following cases:

His authority.
3 Johns., Ch. R., 498;
3 Redf., 91.
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1. Whenever any person shall die intestate, either within this state or out of it, leaving any goods, chattels, or effects within the city and county of New York:

2. Whenever any goods, chattels, or effects of any person who

¹ By an amendment of the charter of the city of New York, L. 1857, ch. 446, § 21, the public administrator was made the head of a bureau in the law department, and to be appointed by the counsel to the corporation. See the consolidation act, L. 1882, ch. 410, §§ 48, 216, *et seq.*

TITLE 4. shall have died intestate, shall arrive within the said city and county, after his death :

3. Whenever any person, coming from any place out of this state, in a vessel bound to the port of New York, and arriving at the quarantine, near the city of New York, shall there die intestate, and shall leave any effects either at the said quarantine, or in the city of New York, or elsewhere :

4. Whenever any effects of any such person so arriving and dying intestate at the said quarantine, shall, after his death, arrive either at the said quarantine, or within the city of New York :

5. Whenever any person, coming from any place out of this state in a vessel bound to the port of New York, shall die intestate on his passage, and any of his effects shall arrive at the said quarantine :

In all the preceding cases, intestacy shall be presumed, until a will shall be proved, and letters testamentary be granted thereon.

14. § 5. But the last section shall not confer on the public administrator, any authority in respect to the estate of any person not a citizen of this state, dying out of this state, or on board any foreign vessel within the harbor of New York, unless,

1. Such person shall have landed within the city and county of New York, or at the quarantine near the said city : or,

2. Unless the effects of such person, or some part of them, shall have been so landed ; and when any effects of such person shall have been so landed, the authority of the public administrator shall extend to such effects only.

[Act of April 21, 1828, 415.]

Order of
surrogate,
when nec-
essary.

§ 6. Whenever there shall be any widow, or next of kin of any such intestate, entitled to a distributive share in his estate, residing in the city of New York at the time of his death, the public administrator, upon receiving notice of such fact, shall not have any authority to interfere with the effects of the deceased, until he shall have obtained an order from the surrogate of the city and county of New York to take charge thereof.

When
order to be
granted.

§ 7. Such order may be granted by the surrogate, upon the application of the public administrator, and upon due proof being made to him by affidavit, that the effects of the deceased are in danger of waste or embezzlement, or that for any other reason, it would be for the benefit of the estate to have the same, or any part thereof, seized and secured.

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Subpoena
to discover
concealed
effects.
4 Dem., 120.

§ 8. Whenever, in any of the cases in which the public administrator is authorised to take charge of the effects of any intestate, any goods, chattels, credits or effects of the deceased, or of which he had possession at the time of his death, or within twenty days previous thereto, shall not have been delivered to the public administrator, nor accounted for, satisfactorily, by the persons who were about the deceased in his last sickness, or in whose hands the effects of the deceased, or any of them, may be supposed at any time to have fallen, the public administrator may institute an inquiry concerning the same ; and upon satisfying the surrogate of the city and county of New York, by affidavit, that there are reasonable grounds for suspecting that any such effects are concealed or withheld, he

shall be entitled to a subpoena to be issued by the surrogate under his seal of office, to such persons as the said public administrator shall designate, requiring them to appear before such surrogate, at the time and place therein to be specified, for the purpose of being examined, touching the estate and effects of the deceased.

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§ 9. If the surrogate be absent from the city of New York, such application for a subpoena, may be made to the circuit judge of the first circuit, to the first judge of the court of common pleas of the said city and county, or to the mayor or recorder of the said city, either of whom is hereby authorised to issue such subpoena, under his hand and private seal, in the same manner as the surrogate.

§ 10. Such subpoena shall be served in the same manner as in civil causes, and if any person shall refuse or neglect to obey the same, or shall refuse to answer touching the matters hereinafter specified, he shall be attached and committed to prison, by the said surrogate or other officer so issuing such subpoena, in the same manner as for disobedience of any citation or subpoena, issued by a surrogate in any case within his jurisdiction.

How served and enforced.

§ 11. Upon the appearance of any person so subpoenaed before such surrogate or other officer, he shall be sworn, truly to answer all questions concerning the estate and effects of the deceased, and shall be examined fully and at large, by the public administrator, in relation to the said effects.

Examination of witness.

§ 12. If upon any inquiry, it shall appear to the officer conducting the same, that any effects of the deceased are concealed or withheld, and the person having the possession of such property, shall not give the security in the next section specified, for the delivery of the same, such officer shall issue his warrant, directed to the sheriff, marshals and constables of the city or county, where such effects may be, commanding them to search for and seize, the said effects, and for that purpose, if necessary, to break open any house in the day time, and to deliver the said property so seized, to the public administrator, which warrant shall be obeyed by the officers to whom the same shall be directed and delivered, in the same manner, as the process of a court of record.

Warrant, when to issue. 3 Bradf., 244.

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§ 13. But such warrant shall not be issued to seize any property, if the person in whose possession such property may be, or any one in his behalf, shall execute a bond, with such sureties, and in such penalty as shall be approved by the surrogate, or other officer, acting in his place, to the public administrator in the city of New York, conditioned that such obligors will account for and pay to the said public administrator the full value of the property so claimed and withheld, (and which shall be enumerated in the said condition,) whenever it shall be determined in any suit to be brought by the public administrator, that the said property belongs to the estate of any deceased person, which the administrator has, by law, authority to collect and preserve.

Bond to stay warrant.

§ 14. Whenever any effects of a deceased person, of which the public administrator is authorised to take charge, shall be at the quarantine at the time of the death of such person, or shall arrive there afterwards, it shall be the duty of the health officer, or his deputy, whichever shall be present, to secure the said effects from

Duty of health officer in certain cases.

TITLE 6. waste and embezzlement, and immediately to give information of such effects to the public administrator, to cause an inventory or account thereof to be taken, and to deliver the same to the said public administrator, unless the said property be of such a description as ought not to be removed, or may be ordered to be destroyed under the laws concerning the public health.

Perishable property

§ 15. If any property taken into the charge of the public administrator, shall be in a perishing condition, he may immediately sell the same at public auction, on obtaining an order for that purpose from the surrogate of New York, which shall be granted on due proof of the fact.

Notice, when to be given.
1 Barb. Ch., 304.

§ 16. If the property of any intestate, of which the public administrator is authorised to take charge, shall exceed in value the sum of one hundred dollars, he shall immediately give notice of his intention to apply to the surrogate of New York, for letters of administration upon the estate of such intestate, specifying the time and place when such application will be made.

How served and published.

§ 17. Such notice shall be served personally on the widow and the relatives of the intestate entitled to any share in his estate, if there be any to be found in the city of New York, at least thirty days before the time therein specified. If there be none to be found in the said city, and in all cases where the notice shall not have been personally served, it shall be published at least twice in each week, for four weeks, in some newspaper printed in the city of New York.

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Granting of letters may be contested.

§ 18. At the time specified in such notice, any person interested in the estate of the deceased, may appear and contest the granting of letters of administration to the public administrator, and shall be entitled to subpoenas to compel the attendance of witnesses, on such hearing.

When executor, widow, or relative, entitled to letters.

§ 19. If it shall appear that the deceased has left any will of his personal property, by which any executor is appointed who is competent, and qualified according to law to take upon him the execution of such will; or if it shall appear that there is a widow or any relative of the deceased entitled to a share in his estate, willing, competent and qualified, according to law to take letters of administration, with the will annexed, if there be one, or to take letters of administration if there be no will, then letters testamentary shall be granted to such executor, or letters of administration shall be granted to such widow or relative, as in other cases.

Effect of such letters.

§ 20. Upon such letters testamentary or letters of administration being granted, all control and authority of the public administrator, over the estate of the deceased, shall cease, and every order that may have been previously granted to him, in relation to the estate, shall be revoked.

Previous expense to be paid.

§ 21. The expenses incurred by the public administrator, in all necessary measures for securing and guarding the effects of the deceased, from waste and embezzlement, of serving and publishing the notice aforesaid, and of obtaining any necessary order from the surrogate, and of executing such order, shall be taxed and allowed by the surrogate, and may be retained by the public administrator out of any moneys or effects of the deceased in his hands, and

the residue thereof, shall be delivered by him to the executor or administrator so allowed or appointed, without any abatement or deduction for commissions, or for any other charges than such as shall have been so allowed and taxed.

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§ 22. If there shall be no monies or effects of the deceased in the hands of the public administrator, to pay such expenses, the same, after being allowed and taxed, shall be paid by the executor or administrator so appointed, in preference to all other debts or claims, except funeral charges, and the public administrator may maintain an action therefor in his own name.

Id.

§ 23. If no executor be allowed, and no letters testamentary, or of administration, be granted by the surrogate, to any other person, at the time specified for hearing the application, or at such other times as shall have been appointed, then, unless it appear that letters testamentary, or of administration, have already been granted on such estate, the surrogate shall grant letters of administration thereon, with the will annexed, or otherwise, as the case may require, to the public administrator; briefly stating that administration of the goods, chattels, credits and effects of the deceased, has been granted to him according to law; which letters, the record thereof, and a transcript of such record, duly certified, shall be conclusive evidence of the authority of the said public administrator, in all cases in which he is authorised by law to act.

Letters, when to be granted to public administrator.

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§ 24. If the property of any intestate, of which the public administrator is authorised to take charge, be worth a sum not exceeding one hundred dollars, he shall immediately give notice, briefly stating that the effects of the deceased, naming him, with his addition, in the hands of the public administrator, will be administered and disposed of by him according to law, unless the same be claimed by some lawful executor or administrator of the deceased, by a certain day to be specified in such notice, not less than thirty days from the service, or first publication thereof, as herein directed.

Notice of administration, when to be given.

§ 25. Such notice shall be personally served on the widow, and every relative of the deceased who shall be residing in the city of New York, if any can be found; and if none be found, and in all cases where such personal service shall not have been made, the notice shall be published once in each week, for four weeks, in a newspaper printed in the city of New York.

How served. 49 How. Pr. R., 268.

§ 26. If, at the time appointed in such notice, no claim to the effects of the deceased shall have been made by any lawful executor or administrator, the public administrator shall make and file in the office of the surrogate of the city and county of New York, an affidavit, stating the value of the property and effects of the deceased, the service and publication of the notice by him, as above directed, and that no claim has been made according to law, and that he has taken upon himself the administration of the estate of the deceased.

Affidavit, &c.

§ 27. Upon filing such affidavit, the public administrator shall be vested with all the rights and powers, and subject to all the duties of an administrator of the estate of the deceased, in the same manner as if letters of administration had been granted. Such affidavit, and a duly certified copy thereof, shall be presumptive evidence of

Effect of filing affidavit.

TITLE 6.

the facts therein contained, and that administration of the estate of the deceased, has been committed to the public administrator according to law.

Power of administrator before letters, &c.

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§ 28. Until letters of administration shall be granted to the public administrator, or until an affidavit shall be filed by him as above directed, he shall not proceed in the administration of any estate, further than to pay funeral charges of the deceased, to take possession of, and secure, his effects as herein before authorised, to sell such of them as shall be perishable, and to defray the expenses of such proceedings, and of serving and publishing notices, and of taking out letters of administration.

Notice to be given to foreign consuls.

§ 29. Whenever the deceased, of whose estate the public administrator is authorised to take charge, shall be a foreigner, and shall not have become naturalized, or taken any steps, for that purpose, it shall be the duty of the public administrator to serve upon the consul of the nation to which the deceased belonged, if any there be in the city of New York, the notice of his intention to apply for letters of administration, and of his intention to administer, herein before specified, in the same manner as they are herein directed to be served, upon the widow or relative of the deceased.

Assets to be delivered to lawful executor, &c.

§ 30. If any lawful executor or administrator shall appear to claim the effects of the deceased, at any time before the public administrator becomes vested with the power of administering such effects, he shall, on producing the letters testamentary, or of administration, be entitled to receive the goods and effects of the deceased in the hands of the public administrator, after deducting the charges specified in the preceding twenty-first section, to be allowed and taxed by the surrogate, as therein directed.

Powers of public administrator when superseded.
1 Barb. Ch., 307; 3 Redf., 51; 1 Dem., 413; 2 Dem., 413.

§ 31. The powers and authority of the public administrator, in relation to the estate of any deceased person, shall be superseded in the three following cases:

1. Where letters testamentary shall be granted to any executor of a will of any deceased person, either before or after the public administrator shall have taken letters, or become vested with the powers of an administrator upon such estate:

2. Where letters of administration of such estate shall have been granted to any other person, before the public administrator became vested with the powers of an administrator, upon the same estate:

3. Where letters of administration shall be granted upon such estate, by any surrogate having jurisdiction, at any time within six months after the public administrator became vested with the powers of an administrator upon such estate.

Id.
1 Barb. Ch., 307; 1 Dem., 413.

§ 32. If any relative of the deceased, entitled to administration on his estate, being competent and qualified according to law, shall, within three months after the public administrator has become vested with the powers of an administrator on such estate, apply to the surrogate of New York for letters of administration, the same shall be granted to him, upon proof to the surrogate that the applicant did not reside in the city of New York at the time of the death of the intestate; or that residing in the said city, no notice was served on him as herein required.

§ 33. Upon notice being given to the public administrator, of the granting such letters testamentary, or letters of administration, in either of the cases aforesaid, by producing to him duly attested copies thereof, his powers and authority in relation to such estate shall cease; and he shall deliver over to the executor or administrator so appointed, the property, monies and effects in his hands, belonging to the said estate, after deducting his commissions on the monies received by him, at the rate herein before allowed, and the expenses incurred by him, in the preceding twenty-first section specified, to be allowed and taxed as therein directed.

§ 34. No suit that shall have been commenced by the public administrator, shall abate on account of his authority having ceased for any cause; but the same may be continued by his successor, or the executor or administrator of the deceased, who shall succeed him in the administration of the estate, in relation to which, suit shall have been brought.

§ 35. Whenever the public administrator shall become vested with the right of administering upon any estate as herein provided, he shall possess the following rights and powers, and be subject to the following obligations:

1. He shall have all the rights, powers and authority given by law to any administrator, except so far as the same may be qualified by the succeeding provisions:

2. He may, like any other administrator, sue and be sued; and he may plead the general issue in any action against him, and give the special matter of his defence, in evidence under that plea:

3. He shall make and return an inventory in all cases, in the same manner and within the same time as is required by law of other administrators; and the same proceedings may be had to compel such return:

4. He may sell the personal property of the deceased at public auction, after publishing notice thereof three days, daily, in a newspaper in the city of New York; but he shall not sell any property exceeding five hundred dollars in value, without having given such notice daily for fourteen days:

5. He shall not sell any public stock, or stock in any incorporated company, unless for the payment of debts, and on the order of the surrogate, to be duly entered in his records:

6. In all cases where the estate of any deceased person in his hands, shall exceed the value of two hundred and fifty dollars, he shall give notice to the creditors of the deceased, to exhibit their claims, by a publication once in each week for eight weeks, in a newspaper printed in the said city, and in the state paper:

7. He may, in his discretion, proceed as other administrators are allowed by law, to compel creditors to exhibit their claims, and with the like effect in all respects:

8. He shall adjust and pay all demands against the estate of the deceased, in the same manner as other administrators; and like them, may refer all disputes respecting such demands:

9. One year after he shall have become vested with the right of administering upon any estate, he shall account on oath to the surrogate of New York for all assets of such estate received by him, and

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Assets to be delivered.

Suits not to abate.
2 Edw., 499.Rights, powers and duties of public administrator
1 Bradf., 21; 4 Bradf., 127.

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TITLE 6. for the application thereof; and the same proceedings may be had to compel such account, as are provided by law, in the case of administrators:

10. He may, in his discretion, proceed as other administrators are allowed by law, after the expiration of twelve months, from the time he became vested with the powers of an administrator on any estate, to have a final settlement of his accounts in relation to such estate, and with the like effect:

11. In the settlement of his accounts, he shall not be allowed for any payments made by him, unless in addition to the other vouchers therefor, it shall appear that the same were made on a joint check, signed by himself and the comptroller of the city of New York, upon the bank in which his deposits are required to be made; excepting that he may be allowed for current expenses authorised by law, not to exceed twenty dollars in any one case:

12. In the settlement of his accounts, he shall not be allowed for any demand which he may have against the estate of the deceased, unless such demand was specified in writing to the surrogate, at the time of applying for letters of administration, or at the time of filing the affidavit herein required to vest him with the rights of an administrator, nor unless it shall appear that he had such demand, or that his responsibility, on which it may be founded, existed, previous to the death of the person, against whose estate it may be exhibited:

13. He shall pay all legacies and shares of the estate of the deceased, according to the decrees of the surrogate:

14. The balance of any monies remaining in his hands on the adjustment of his accounts, shall be paid into the treasury of the city of New York; and he shall transfer and deliver to the corporation of the said city, all public stocks, and all stock in any incorporated company, belonging to the estate of the deceased.

Deposit of
monies.
4 Bradf.,
21; 7 Hun,
306.

[1871]

§ 36. The public administrator shall deposit all monies by him collected and received, within two days after the receipt thereof, in such bank as the common council of the said city shall designate, to the joint credit of himself and the comptroller of the city of New York, excepting so much as may be necessary to pay the current expenses of any proceedings authorised by law, which shall be allowed by the surrogate of New York, and shall not exceed twenty dollars in any one case.

How
drawn out.
4 Bradf.,
21; 7 Hun,
306.

§ 37. The monies so deposited, shall be drawn out, only, on the joint check of the public administrator and the said comptroller, in the cases where by law the public administrator is required to pay out monies. The comptroller shall preserve a register of all checks signed by him, as a part of the documents of his office.

Advances
to rela-
tives.

§ 38. The public administrator may, at any time, advance to any relative of the deceased, such portion of the share of any estate to which he may be entitled, not exceeding fifty dollars, as in the opinion of the surrogate may be necessary for the support of such relative.

Annual ac-
count of
public
adminis-
trator.

§ 39. The public administrator shall exhibit to the common council of the city of New York, on the first day of January in each year, or within fourteen days after that day, a statement, on oath, of the monies received by him for commissions and expenses, and of

the total amount of his receipts and expenditures, in each case in which he shall have taken charge of and collected any effects, or in which he shall have administered on any estate, during the preceding year, with the name of the deceased, his addition, the place of his residence at the time of his death, if the same be known, and the country or place from which he came, if he was not a resident of this state at the time of his death.

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§ 40. The public administrator shall cause the said statement to be published for three weeks, daily, in a newspaper in the city of New York, and twice in each week in the state paper; the expense of which, shall be deducted by him from the balance in his hands, payable to the city treasury.

To be published.

§ 41. If any public administrator in the city of New York, shall neglect to render or to publish such statement, as herein before required, he shall forfeit five hundred dollars, to be recovered by the attorney-general, for the use of this state; and on such recovery being had, he shall forfeit his office, and be thereafter incapable of being appointed to the same.

Penalty for omissions.

§ 42. The mayor, aldermen and commonalty of the city of New-York, shall, in all cases, be responsible for the application of all monies received by the public administrator, according to law, and for the due and faithful execution of all the duties of his office.

Responsibility of corporation.
4 Sandf. S. C., 4; 42 N. Y., 354.
Id.

§ 43. The said corporation shall also be answerable for all stock transferred by the public administrator, and the dividends received thereon, and for all monies paid into the city treasury by him, or which ought to be so transferred or paid in according to law, after deducting therefrom the commissions allowed by law; but not for any interest on such monies, or dividends on stock. All persons who shall be entitled to receive such monies and stock, as creditors, legatees, or relatives of the deceased, and all persons, aggrieved by any unauthorised acts, or omissions, of the public administrator, shall have the same remedies against the said corporation for the same, as they would have, against any executor.

4 Sandf., S. C., 4; 3 Sandf., Ch., 179; 4 Bradt., 21; 7 Hun, 309; id., 283.
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§ 44. Whenever the public administrator shall resign, or be removed from his office, he shall immediately deliver over all papers, money and effects, in his hands, to his successor; and in case of the death of such officer, the persons into whose custody or possession any such papers, money or effects, may come, shall, on demand, deliver the same to the successor duly appointed. Such delivery may, in either case, be enforced in the manner provided in chapter fifth of the first part of the Revised Statutes, in relation to public officers.

Papers, &c., to be delivered to successor.
1 Sandf., S. C., 136.

§ 45. Every person keeping a hotel, or boarding or lodging house in the city of New York, shall report in writing to the public administrator the name of every person not a member of his family, who shall die in his or her house, within twelve hours after such death; and every coroner within twelve hours after an inquest, shall report to the public administrator, the name, if known, of the deceased person. Every undertaker shall also report to the public administrator within twelve hours after burial by him, any deceased person having no next of kin known to him to be entitled to administer, the name and residence of such deceased person. Whoever

Death of transient persons to be reported.
Penalty.

TITLE 6. shall neglect to comply with this provision shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment in the penitentiary for a period not exceeding six months nor less than one month, or by a fine of one hundred dollars, one moiety of which shall be given to the informer, and the other moiety be paid into the city treasury. [*Thus amended by L. 1866, ch. 802.*]

Penalty,
when to be
recovered.

§ 46. The public administrator in New York shall cause a copy of the last section to be left at every boarding and lodging house in the city of New York, at least once in each year; and he shall not be entitled to recover of any person the penalty given by the last section, without due proof of the service of a copy of that section, personally, on the defendant, previous to the neglect for which such suit may be brought, and within one year before the commencement of such suit.

[The provisions of this article are compiled from L. 1815, 161, and L. 1821, 187, with additions and variations.]

L. 1829, Chap. 148 — An act in relation to the office of public administrator in the city of New York.

[Section 1 is omitted as temporary.]

Power of common council. § 2. It shall and may be lawful for the common council of the said city to give such directions, and to make such rules and regulations for the government of the said public administrator, as they may from time to time deem necessary and proper to carry into effect the provisions of said article; and it shall be his duty faithfully in all things to conform to the same.

4 Sandf. S. C., 4; 2 Sandf. Ch., 179; 4 Bradf., 2.

L. 1887, Chap. 573 — An act to provide for the settlement of certain intestate estates in the hands of the public administrator in the city of New York.

In certain cases only persons whose residences are known to be cited for settlement of account. **SECTION 1.** Where an estate of any deceased person in the hands of the public administrator in the city of New York is claimed by the widow, husband or next of kin of the deceased, any or all of whom reside out of this state, and after paying the just debts of the deceased and the expenses of administration, the balance of said estate is less than two hundred and fifty dollars, service of the citation upon the judicial settlement of the account of the public administrator shall be made upon those persons only whose places of residence are known.

Surrogate's order for service on non-residents. § 2. The order of the surrogate directing the service of the citation upon those persons who reside out of the state shall direct that the public administrator, at least forty days before the return day of said citation, deposit in the post-office in the city of New York copies of the citation and said order, contained in a securely closed post paid wrapper, directed to the person or persons to be served at a place or places specified in the order; and service made in accordance with said order shall be sufficient service.

Shares of unknown persons to be paid into the treasury. § 3. The public administrator shall pay the share or shares of any unknown persons, or of any persons whose places of residence are unknown, in and to an estate described in section one, into the treasury of the city of New York to the credit of the account of intestate estates.

Settlement of estates on deposit in Guardian Savings Institution. § 4. The public administrator and comptroller in the city of New York, jointly are hereby authorized and empowered to use such amount of unclaimed interest money on

deposit in banks, heretofore accumulated on estates administered upon by the public administrator, as may be necessary to close all unsettled estates which were on deposit by the public administrator in the Guardian Savings Institution of the city of New York, at the time it suspended payment; and they are hereby authorized and empowered to pay the amount of such unsettled estates out of such interest money into the city treasury, to the credit of the account of intestate estates.

Payments of commissions on unsettled estates. § 5. The commissioners on intestate estates on deposit in the Guardian Savings Institution, shall likewise be paid by the public administrator and comptroller out of said interest money into the city treasury, to the credit of the general fund.

When estate, less than \$250, not claimed in 2 years, money to be paid into treasury § 6. When an estate of any deceased person is not claimed by the widow, husband or next of kin of the deceased for a period of two years after the estate passes into the possession of the public administrator, and, after paying the just debts of the deceased and the expenses of administration, the balance of said estate is less than two hundred and fifty dollars; the public administrator shall pay the residue into the city treasury to the credit of account of intestate estates.

Act not to affect persons' rights; decree of distribution. § 7. The rights and remedies of all persons interested in any estate paid into the treasury pursuant to sections three or seven of this act, whether as legatee, next of kin, creditor or otherwise, to compel an accounting by the public administrator before the surrogate of the county of New York, are not here affected or impaired; but the decree of distribution which shall be made in such proceedings shall provide that the payments therein directed shall be made by the comptroller out of the intestate estates' account of the city treasury.

Proviso. § 8. Nothing in this act contained shall be construed to affect or impair the right of any person interested in the interest money mentioned in sections four and five, but such rights may be enforced by appropriate remedies against the city of New York.

Money hereafter received from institution. § 9. Any money hereafter collected by the public administrator from the receiver of the Guardian Savings Institution shall be paid by the public administrator and comptroller to the credit of the account of intestate estates.

ARTICLE SECOND.

OF PUBLIC ADMINISTRATORS IN THE SEVERAL COUNTIES OF THIS STATE, OTHER THAN THE COUNTY OF NEW YORK.

- SEC. 47.** Cases in which county treasurer shall take charge of effects of intestates.
48. May maintain suits, to collect and preserve effects.
49. In certain cases, order may be given him to seize and secure effects.
50. Same proceedings to discover concealed effects, may be had as in New York.
51. Perishable property may be sold upon order of surrogate.
52. Property taken charge of by county treasurer, to be appraised.
53. Proceedings on appraisement.
54. Inventory to be sworn to and returned to surrogate.
55. Time for returning may be extended; penalty for neglect to return.
56. Upon making return, bond to be given, and letters to collect, etc., to issue.
57. Notice to persons claiming right to administer, to be published.
58. If claimant appear before expiration of notice, letters may be granted to him, etc.
59. On expiration of notice, letters to be granted to persons entitled who shall appear.
60. Duty of county treasurer upon letters being granted to another.
61. When letters of administration to be granted to county treasurer.
62. Duty of county treasurer to accept letters, and give bond.
63. Letters, etc., to be evidence of authority of county treasurer.
64. Surrogate to transmit a copy of such letters to the comptroller.
65. Powers of county treasurer before letters are granted to him.
66. Cases in which the authority of county treasurer shall be superseded.

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TITLE 6. SMO. 67. On being superseded to deliver over assets, deducting expenses, etc.

- 68. Previous acts valid ; pending suits to be continued.
- 69. General powers of county treasurer, as administrator.
- 70. To account within one year ; account how compelled.
- 71. Allowances on settlement ; balance to be paid into state treasury.
- 72. Annual account to be rendered to comptroller ; its contents.
- 73. To publish a copy of such account ; penalty for neglect.
- 74. Claimants of monies paid into treasury, may petition chancellor, etc.
- 75. Chancellor may order payment of amount due to such claimants.
- 76. Comptroller to draw his warrant for such amount.

Powers of
county
treasurer
as public
adminis-
trator.
2 Dem.,
653 ; 4
Dem., 85.

§ 47. The county treasurer in each of the counties of this state, shall by virtue of his office, have authority to collect and take charge of the assets of every person dying intestate, where such assets shall amount to one hundred dollars or more, either in his county or out of it, upon which no letters of administration shall have been granted, in the following cases :

1. Whenever such person shall die, leaving assets in the county of such treasurer, and there shall be no widow or relative in the county, entitled, or competent, to take letters of administration on such estate :

2. Whenever assets of any person so dying intestate, shall, after his death, come into the county of such treasurer, and there shall be no person entitled or competent as aforesaid to take administration of such estate. But in the county of Richmond, the county treasurer shall not have power to act as public administrator, in those cases in which the public administrator in the city of New York has jurisdiction, according to the provisions of the first article of this title.

In the above cases, intestacy shall be presumed, until a will shall be proved, and letters testamentary issued thereon.

14.

§ 48. For the purpose of collecting and preserving the said assets, he may maintain suits in his name of office, and without any other authority, in the same manner as any executor may by law.

In certain
cases to
secure
effects.
2 Dem., 653.

§ 49. Although there may be a widow or relative of any such intestate, entitled to administration on his estate, in the county, yet, if due proof be made to the surrogate of the county, that there are creditors, or relatives of the deceased, residing more than one hundred miles distant from the residence of such surrogate, who are interested in the distribution of the estate, and that the effects of the deceased are in danger of waste or embezzlement, he may grant an order to the treasurer of the county, authorising him to seize and secure the said effects, or any part thereof ; which order shall vest in him, all the powers given in the two preceding sections.

Concealed
effects.
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§ 50. If any of the effects whereof the county treasurer is authorised to take charge, shall be concealed or withheld, he shall be entitled to the same process from the surrogate or first judge of the county, to discover and seize the same, on the same evidence and on the like terms, as the public administrator in the city of New York.

Perishable
property.

§ 51. Any property, that may be in a perishing condition, taken into the charge of such treasurer, may be sold by him at auction, on obtaining an order for that purpose from the surrogate of the county ; which shall be granted, on due proof of the fact, and shall specify the time and manner, and the notice of such sale.

§ 52. Upon taking charge of the property of any intestate, the county treasurer shall cause the same to be appraised by two disinterested appraisers, to be appointed by the surrogate as in other cases. ART. 2.
Property to be appraised.

§ 53. The said appraisers shall make a just and true inventory of such property, and of the true value of each article; duplicates of which inventory shall be subscribed by them, and verified by their affidavits. They shall be allowed the same compensation, as appraisers under the third title of this chapter. Proceedings.

§ 54. Within ten days after taking charge of any property, as herein authorised, the county treasurer shall return an inventory thereof, signed and verified by the appraisers, to the surrogate of the county, to be by him filed; and shall accompany the same with his affidavit, that the same contains a true and just account of all the effects of the deceased, which have come to his hands or knowledge. Inventory.

§ 55. The time for making such return, may, on good cause shown, be extended by the surrogate ten days longer. Any county treasurer who shall neglect to make such return within the time above prescribed, or within the time so extended, of all the effects of any deceased person, which shall have come to his hands, shall forfeit five hundred dollars, to be sued for, and recovered, by the county superintendents of the poor, for the use of the poor, and shall forfeit his office. Id., penalty for neglect to return.

§ 56. At the time of making such return, the county treasurer shall give the bond required by law, to be given by any collector of an estate, appointed by a surrogate, with such sureties, and in such penalty, as the surrogate shall approve. The surrogate shall thereupon issue letters to the said county treasurer, authorising him to collect and preserve the estate of the deceased. Bond, &c.

§ 57. Immediately upon the issuing of such letters to collect, the surrogate shall cause notice thereof, to be published once in each week for three months, in a newspaper printed in his county, and in the state paper, requiring all persons claiming a right to administer on such estate, to appear and interpose such claim, before the surrogate, within a certain time therein to be specified, which shall be at least six months after the first publication of such notice in the state paper. Notice to be published.

§ 58. If before the time appointed in such notice, any person so entitled to administration, shall appear and claim the same, the surrogate shall cause ten days' notice of such claim to be served on the collector appointed, and may proceed to grant letters as aforesaid; and thereupon the publication of the notice specified in the last section shall be discontinued. Letters to claimants.

§ 59. At the time appointed, any person entitled to administration on such estate, and duly qualified and competent, who shall appear and claim the same, shall be entitled to letters testamentary or of administration, as the case may be, as in other cases. Id.

§ 60. Upon letters testamentary or of administration being so issued, to any person claiming them, all control and authority of the county treasurer, over the estate of the deceased, shall cease, and he shall deliver all the assets in his hands belonging to such estate, to the person so appointed, after deducting therefrom, the expenses Effect thereof.

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TITLE 6. incurred in securing and preserving the said assets, in obtaining letters to collect, and in publishing the notice herein required, and a reasonable compensation for his services, not exceeding three dollars for each day necessarily employed, to be allowed and taxed by the surrogate, on the oath of the collector.

Letters to
county
treasurer.

§ 61. If no executor be allowed, and no letters testamentary or of administration be granted by the surrogate, to any person claiming the same as aforesaid, within the time specified in the notice, then, unless it appear that letters testamentary or of administration have already been granted on such estate, by some other surrogate, the surrogate shall grant letters of administration thereon to the county treasurer, as in other cases, upon receiving the like bond, with the like sureties, and in the like penalty, as administrators are required to give.

Bound to
accept
them.

§ 62. It shall be the duty of the county treasurer to receive and accept such letters of administration, and to give the bond above required.

Evidence
of his
authority.

§ 63. Such letters of administration, and the record thereof, and a transcript of such record, duly certified, shall be conclusive evidence of the authority of the county treasurer, in all cases in which the surrogate has jurisdiction by this title.

Copy of
letters to
be sent to
comptrol-
ler

§ 64. The surrogate shall immediately transmit to the comptroller, a certified copy of all such letters granted by him to the county treasurer; the expense of which copy shall be paid to him out of the state treasury, on the warrant of the comptroller.

Powers of
county
treasurer
before
letters.

§ 65. Until letters of administration shall be granted as aforesaid, the county treasurer shall not proceed further in the administration of any estate, than to pay the funeral charges of the deceased, to collect debts, to take possession of, and secure, his effects, to sell such thereof as shall be perishable, and to defray the expenses of the proceedings required by law.

Authority
how super-
seded.

§ 66. The powers and authority of the county treasurer, in relation to the estate of any deceased person, shall be superseded,

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1. By the production of any letters testamentary, that may have been granted before, or that shall be granted subsequent, to his becoming vested with the authority of an administrator, upon the same estate:

2. By the production of any letters of administration, that shall have been granted to any other person, upon the same estate, before the said county treasurer became vested with the powers of an administrator thereon:

3. By the production of any letters of administration, issued by the surrogate of any county in this state, of which the deceased was a resident at the time of his death, granted after the county treasurer may have become vested with the powers of an administrator, upon the estate of such deceased.

Effect
thereof.
49 Barb.,
181.

§ 67. On his authority being so superseded, he shall deliver over to the executor or administrator so producing such letters, all the assets of the deceased in his hands, after deducting therefrom the allowance for his services, and the expenses incurred, to be taxed and allowed by the surrogate as aforesaid.

Id.

§ 68. All acts done by such county treasurer, in good faith,

previous to such notice, shall be valid; and all suits commenced by him, may be continued by and in the name of the executor or administrator who shall succeed him in the administration of the estate, in relation to which such suit may be brought.

ART. 2.

§ 69. Upon receiving letters of administration, the county treasurer shall be vested with all the powers and rights of other administrators, and shall be subject to the same duties and obligations, except as herein otherwise provided.

Powers as administrator.

§ 70. Within one year after receiving letters of administration, the person so appointed shall account on oath to the surrogate of his county, for all assets of such estate received by him, and for the application thereof; and proceedings may be had at the instance of any person interested, or of the attorney-general, or the comptroller, to compel such account.

To account.

§ 71. On the settlement of his accounts, he shall be allowed for his expenses as other administrators, and for his services, double the commissions allowed them by law. The balance of any monies in his hands, shall be paid into the treasury of the state, for the benefit of such persons as shall be entitled to receive the same.

Allowances; payment of balance. 2 Dem., 661.

§ 72. The county treasurer of every county, shall exhibit to the comptroller of the state, at the time of rendering his account of taxes, in each year, a statement, on oath, of all the monies received by him, for commissions, services and expenses, and of the total amount of his receipts and expenditures, in each case in which he shall have taken charge of and collected any effects, or in which he shall have administered on any estate, during the preceding year; with the name of the deceased, his addition, the place of his residence at the time of his death, if the same be known, and the place from which he came, if he was not a resident of this state at the time of his death.

Account to comptroller.

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§ 73. The county treasurer shall cause a copy of every statement made by him, to be published for three weeks, once in each week, in a newspaper printed in his county, and in the state paper; the expense of which shall be retained by him out of any balance in his hands, payable into the state treasury. For a neglect to comply with this provision, he shall forfeit one hundred dollars, to be recovered by the attorney-general, for the use of the people of this state. The comptroller shall give notice to the attorney-general, of every such omission.

To be published; penalty for neglect.

§ 74. Any person claiming any moneys that shall have been paid into the state treasury by any county treasurer, pursuant to this title, or by any administrator pursuant to section eighty-one of title three of this chapter, may present a petition to the supreme court, praying that such moneys may be paid to him; and a copy of such petition shall be served upon the attorney-general fourteen days previous to the time when the same shall be presented. [*Thus amended by L. 1877, ch. 456.*]

Claims to money paid into state treasury by public administrators.

§ 75. The chancellor may make such order as he shall judge expedient, to ascertain the rights of the claimant, either by a reference to a master, or by awarding an issue, or otherwise; and may grant an order, directing the payment of any monies that shall appear to be due to such claimant, without any interest thereon, and deducting

Who may order money to be paid.

TITLE 6. any expenses that may have been incurred on the part of the state, in relation to such balance.

To be paid
by comp-
troller.

§ 76. Upon the production of a certified copy of such order, the comptroller shall draw his warrant on the treasury, for the amount therein specified; which shall be paid by the treasurer, to the person entitled thereto.

[Supplementary Article.]

ARTICLE 2A.

OF THE PUBLIC ADMINISTRATOR OF KINGS COUNTY.

L. 1871, Chap. 335—An act to authorize the appointment of a person to be public administrator in the county of Kings, and to determine the powers and duties of such officer.

Appointment of public administrator; his term of office. SECTION 1. Within ten days after the passage of this act the surrogate of the county of Kings, and county treasurer of said county, are hereby authorized to appoint a public administrator for the county of Kings, and thereafter, from time to time, as often as a vacancy in the office shall occur, to appoint a competent person to be the public administrator in the county of Kings, who shall hold his office for the term of five years, unless sooner removed for cause.

80 Hun, 401.

Oath of office and official bond. § 2. The person so appointed, before entering upon the duties of his office, shall take and subscribe before the county clerk of Kings county, or a justice of the supreme court, or the county judge of Kings county, the oath prescribed by the Constitution of the state of New York, and shall execute a bond, with such sureties as shall be approved by a justice of the supreme court, or the county judge of Kings county, to the said county of Kings, in the penal sum of fifty thousand dollars, conditioned for the faithful discharge of all the duties of his office, and that he will fully and correctly account for and pay over all moneys and property that may come into his hands as such public administrator, according to law, which bond shall be filed with the clerk of the county of Kings.

Commissions upon property of intestates. § 3. The public administrator shall be entitled to retain, from all moneys or property of any intestate that may come into the hands, after deducting all actual and necessary expenses incurred, the same commissions as are now allowed by law to executors or administrators.

Powers of public administrator. § 4. Such public administrator shall have the prior right and authority to collect, take charge of and administer upon the goods, chattels, personal estate and debts of persons dying intestate, and for that purpose to maintain suits as such public administrator as any executor or administrator might by law in the following cases:

1. Whenever such person shall die leaving any assets or effects in the county of Kings, and there shall be no widow, husband or next of kin entitled to a distributive share in the estate of said intestate, resident in the state, entitled, competent or willing to take out letters of administration on such estate.

2. Whenever assets or effects of any person dying intestate shall, after his death, come into the county of Kings and there shall be no person, as aforesaid, entitled, competent or willing to take administration of such estate. In the above cases, intestacy shall be presumed until a will shall be proven, and letters testamentary issued thereon. [*Thus amended by L. 1882, ch. 124.*]

1 Dem., 475; 80 Hun, 401; 94 N. Y., 544.

Laws applicable. § 5. All provisions of law conferring jurisdiction, authority, or power upon, or otherwise relating to the office of public administrator of the city of New York and to the office of public administrator in the several counties of

this state, so far as applicable, are hereby declared to apply to, and are conferred upon, the office hereby created.

Surrogate may issue letters of collection. § 6. The surrogate of the county of Kings, in cases where now authorized by law to issue letters of collection, may, in his discretion, issue letters of collection to such public administrator without further security than required by this act.

No salary to be paid. § 7. Such public administrator shall receive no salary for his services.

TITLE I.

CHAPTER VII.

OF FRAUDULENT CONVEYANCES AND CONTRACTS,
RELATIVE TO REAL AND PERSONAL PROPERTY.TITLE I.—OF FRAUDULENT CONVEYANCES AND CONTRACTS, RELATIVE
TO LANDS.TITLE II.—OF FRAUDULENT CONVEYANCES AND CONTRACTS, RELATIVE
TO GOODS, CHATTELS, AND THINGS IN ACTION.

TITLE III.—GENERAL PROVISIONS.

TITLE I.

Of fraudulent Conveyances and Contracts, relative to Lands.

- SEC. 1. Conveyances of lands, etc., with intent to defraud purchasers, void as to them.
2. Qualification of preceding section, as to subsequent purchasers.
3. Conveyances containing power of revocation, etc., void as to subsequent purchasers.
4. Certain conveyances by person authorised to revoke former conveyance, valid.
5. Such conveyances valid from the time the power to revoke vested.
6. Writing, etc., necessary to convey certain interests in land.
7. Last section not to extend to wills or certain trusts, or fines.
8. Contracts to sell or lease lands, to be in writing; consideration to be stated.
9. Contracts subscribed by lawful agent, valid.
10. Powers of chancery to compel performance of agreements, not to be affected.

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Fraudulent conveyances, void, &c.
4 N. Y., 211;
1 N. Y., 308;
25 How. Pr. R., 483; 40
How. Pr. R., 441; 8
Bosw., 174.

SECTION 1. Every conveyance of any estate or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created, with the intent to defraud prior or subsequent purchasers for a valuable consideration, of the same lands, rents or profits, as against such purchasers, shall be void.

[1 R. L., 75, § 8.]

Qualifications of last section.
24 How. Pr. R., 311;
55 N. Y., 501.

§ 2. No such conveyance or charge, shall be deemed fraudulent in favor of a subsequent purchaser, who shall have actual or legal notice thereof, at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefitted by such charge was privy to the fraud intended.

Conveyances with power of revocation void, &c.
38 Barb., 206; 59 N. Y., 450.

§ 3. Every conveyance or charge of, or upon, any estate or interest in lands, containing any provision for the revocation, determination or alteration, of such estate or interest, or any part thereof, at the will of the grantor, shall be void, as against subsequent purchasers from such grantor for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered, by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

[1 R. L., 75, § 5.]

Conveyances by one autho-

§ 4. Where a power to revoke a conveyance of any lands, or the rents and profits thereof, and to reconvey the same, shall be given

to any person, other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits, to a purchaser for a valuable consideration, such subsequent conveyance shall be valid, in the same manner and to the same extent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

TITLE 1.

raised to
revoke for-
mer grants.

§ 5. If a conveyance to a purchaser, under either of the two last preceding sections, shall be made, before the person making the same shall be entitled to execute his power of revocation, it shall nevertheless be valid, from the time the power of revocation shall actually vest in such person, in the same manner and to the same extent as if then made.

§ 6. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power, over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing.

Requisites
to convey
certain in-
terests in
lands.

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55 N. Y., 661; 7 J. & S., 399; 68 N. Y., 31; 64 Barb., 434; 1 Abb. Ct. App. Dec., 36; 60 Barb., 234; 38 How. Pr. R., 388; 23 N. Y., 364; 14 N. Y., 584; 13 N. Y., 367; 9 N. Y., 27, 148; 7 N. Y., 568; 5 N. Y., 404, 465, 568; 3 N. Y., 518; 31 Barb., 561; 26 Barb., 364, 448; 19 Barb., 138; 17 Barb., 154; 16 Barb., 439; 10 Barb., 338; 7 Barb., 63, 184; 3 Barb., 618; 1 Barb., 545; 3 Barb. Ch., 232; 4 Denio, 51; 1 Denio, 553; 3 Hill, 436; 11 Paige, 406; Cl. Ch., 404; 3 Sandf. Ch., 238; 1 Sandf. Ch., 579; 4 Edw., 507; 2 Sandf. S. C., 108; 3 Duer, 255; 16 Wend., 30, 461; 13 Wend., 434; 10 Wend., 438; 5 Wend., 638; 6 Abb., 132; 19 How. Pr. R., 117; 8 How. Pr. R., 141; 2 E. D. Smith, 94, 101; 34 N. Y., 311; 30 How. Pr. R., 436; 47 N. Y., 547; 46 N. Y., 633; 45 N. Y., 445; 44 N. Y., 159; 53 Barb., 232; 3 T. & C., 643; 57 Barb., 434; 13 Abb. N. C., 214, 340; 15 J. & S., 193; 16 J. & S., 70, 520; 18 J. & S., 136; 26 Hun, 253, 505; 23 Hun, 537, 571; 40 Hun, 423; 66 N. Y., 332; 30 N. Y., 351; 96 N. Y., 422; 97 N. Y., 105, 112, 216, 236; 100 N. Y., 568; 24 Hun, 575; 84 N. Y., 31.

[1 R. L., 75, §§ 9, 10 and part of § 12.]

§ 7. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament; nor to prevent any trust from arising or being extinguished, by implication or operation of law; nor to prevent any declaration of trust from being proved by any writing subscribed by the party declaring the same; nor to prevent, after a fine shall have been levied, the execution of a deed or other instrument in writing, declaring the uses of such fine. [Thus amended by L. 1860, ch. 322.]

Qualifica-
tion of last
section.

30 How. Pr.
R., 436; 47
N. Y., 547;
44 N. Y.,
159; 58
Barb., 232;
38 How. Pr.
R., 388; 3
T. & C., 645;
96 N. Y., 414;
26 Hun, 253;
43 Hun, 294.

[1 R. L., 75, part of §§ 12, 13 and 14.]

§ 8. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party, by whom the lease or sale is to be made.

Contracts
to lease or
sell land.

52 N. Y., 424; 45 N. Y., 584; 43 N. Y., 556; 40 N. Y., 498; 36 N. Y., 539; 1 Lans., 284; 8 Abb., N. S., 422; 1 Sweeney, 656; 8 Robt., 486; 6 Bosw., 7; 3 Bosw., 375; 25 N. Y., 156; 1 Robt., 294; 38 How. Pr. R., 388; 47 Barb., 175; 49 Barb., 68; 52 Barb., 484; 53 Barb., 68; 57 Barb., 424; 3 Lans., 248; 19 N. Y., 300; 14 N. Y., 584; 13 N. Y., 587; 13 N. Y., 364; 10 N. Y., 234; 5 N. Y., 243, 465; 4 N. Y., 403; 25 Barb., 183, 437; 18 Barb., 60; 17 Barb., 471, 616; 14 Barb., 90; 12 Barb., 635; 10 Barb., 333; 8 Barb., 132; 7 Barb., 191; 5 Barb., 364; 2 Barb., 613; 1 Barb., 525; 1 Denio, 553; 7 Hill, 83; 4 Hill, 237; 1 Wend., 467; 19 Wend., 333; 16 Wend., 28, 460, 527; 15 Wend., 390, 400; 13 Wend., 53; 11 Paige, 431; 10 Paige, 339, 526; 8 Cow., 228; 7 Cow., 94; 2 Cow., 680; 13 Johns. R., 73; 2 Johns. R., 258; 4 Edw., 105; 1 Johns. Ch. R., 143, 274; 3 Duer, 293; 1 Duer, 96; 14 How. Pr. R., 333; 8 How. Pr. R., 141; 25 N. Y., 156; 30 How. Pr. R., 426; 6 Hun, 563; 5 Daly, 15; 13 Hun, 170; 7 Hun, 441; 4 Hun, 792; 67 N. Y., 30; 13 Hun, 81; 64 How. Pr. R., 139; 63 N. Y., 499; 64 N. Y., 357; 57 How. Pr. R., 97; 23

TITLE I.

Hun, 304; 23 Hun, 29; 71 N. Y., 590; 13 Abb. N. C., 16, 314; 18 J. & S., 126; 30 Hun, 283; 31 Hun, 476; 35 Hun, 18, 103, 148; 37 Hun, 536; 39 N. Y., 680; 100 N. Y., 644; 26 Hun, 505; 43 Hun, 1; 103 N. Y., 414; 44 Hun, 462; 104 N. Y., 414.

[1 R. L., 75, § 11.]

Id.

§ 9. Every instrument required to be subscribed by any party, under the last preceding section, may be subscribed by the agent of such party lawfully authorised.

14 N. Y., 584; 5 N. Y., 243; 4 Hill, 357; 4 Edw., 105; 11 Paige, 406; 10 Paige, 126, 205, 394; 8 Duer, 395; 1 Duer, 98; 25 N. Y., 155; 20 How. Pr. R., 436; 53 Barb., 681; 1 Lans., 284; 40 N. Y., 370; 3 Robt., 436; 70 N. Y., 595.

Powers of courts of equity.

§ 10. Nothing in this title contained, shall be construed to abridge the powers of courts of equity, to compel the specific performance of agreements, in cases of part performance of such agreements.

1 Johns. Ch. R., 274; 4 N. Y., 403; 6 Barb., 98; 3 Barb. Ch., 407; 3 Barb. Ch., 555; 4 Sandf. S. C., 524; 34 N. Y., 311; 4 Hun, 113; 43 N. Y., 30; 1 Abb. Ct. App. Dec., 515; 51 Barb., 308; 3 Lans., 249; 4 Bosw., 276; 60 N. Y., 577; 7 Hun, 538; 8 Hun, 625; 64 N. Y., 286; 19 Hun, 564; 26 Hun, 505; 37 N. Y., 285; 43 Hun, 541.

TITLE II.

Of fraudulent Conveyances and Contracts, relative to Goods, Chattels, and Things in Action.

- Smo. 1. Transfers of personal property for use of grantor, void as to creditors.
 2. Certain agreements to be in writing and subscribed by the party to be charged.
 3. Requisites to the validity of contracts for sale of personal property.
 4. What to be a memorandum, within last section, of sales at auction.
 5. Certain transfers of goods, etc., fraudulent as to creditors, unless delivered, etc.
 6. Who to be deemed creditors within last section.
 7. Qualifications of two last sections.
 8. Instruments subscribed by lawful agent, valid.

Certain transfers of personal property, void.

SECTION I. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

10 Bosw., 645, 419; 4 Robt., 494; 4 Abb. Ct. App. Dec., 95; 66 N. Y., 374; 21 N. Y., 33, 594; 6 N. Y., 510; 4 N. Y., 215; 19 Barb., 450; 17 Barb., 316; 12 Barb., 168; 8 Barb., 346; 6 Hill, 459; 4 Johns. Ch. R., 462; 19 How. Pr. R., 397; 1 E. D. Smith, 448; 26 How. Pr. R., 432, 513; 16 Abb. N. C., 46; 27 Hun, 390, 399; 35 Hun, 128; 36 Hun, 167; 39 Hun, 36; 96 N. Y., 36; 99 N. Y., 457; 84 N. Y., 522; 43 Hun, 174.

[1 R. L., 75, § 1.]

Certain agreements to be in writing, etc.

§ 2. In the following cases, every agreement shall be void unless such agreement or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith:

1. Every agreement that by its terms is not to be performed within one year from the making thereof.
2. Every special promise to answer for the debt, default or mis-carriage of another person.
3. Every agreement, promise or undertaking, made upon consideration of marriage, except mutual promises to marry. [*This section thus amended by L. 1863, ch. 464.*]

1 T. & C., 256; 6 T. & C., 309; 60 N. Y., 238; 45 N. Y., 33; 60 N. Y., 438; 7 Lans., 73; 1 Hun, 618; 16 Abb., N. S., 537; 6 T. & C., 611; id., 632; 4 J. & S., 341; 3 T. & C., 418; 59 N. Y., 250; 13 Hun, 170; 75 N. Y., 446; 18 Hun, 31; 7 Daly, 30; id., 345; 32 Hun, 412; 4 Hun, 414; 57 How. Pr. R., 174; 3 Hun, 613; 7 Hun, 583; 73 N. Y., 699; 59 N. Y., 256; 60 N. Y., 438; 15 Hun, 178; 67 N. Y., 237; 14 Hun, 559; 7 Daly, 345; 10 Hun, 343; 70 N. Y., 180; 7 Hun, 30; 62 N. Y., 500; 67 N. Y., 538; 9 Hun, 68; 15 Hun, 147; 9 Hun, 173; 8 Daly,

308; 28 N. Y., 498; 31 N. Y., 537, 412; 16 N. Y., 484; 15 N. Y., 9; 14 N. Y., 298; 13 N. Y., 282; 8 N. Y., 215; 5 N. Y., 465; 3 N. Y., 337, 309; 2 N. Y., 229, 543; 29 Barb., 489; 28 Barb., 446; 26 Barb., 140; 25 Barb., 179, 625; 23 Barb., 537, 610; 22 Barb., 516; 21 Barb., 218; 20 Barb., 238; 19 Barb., 358; 18 Barb., 89; 16 Barb., 645; 15 Barb., 260; 14 Barb., 570; 13 Barb., 493, 542; 11 Barb., 15, 144; 8 Barb., 323; 7 Barb., 194; 5 Barb., 501; 4 Barb., 131; 3 Barb., 209, 335; 2 Barb., 182, 225, 534; 2 Barb. Ch., 221; 5 Hill, 146, 300, 484; 4 Hill, 179, 211; 3 Hill, 130, 587; 2 Denio, 197, 484; 4 Denio, 235, 582; 2 Denio, 89, 162, 368, 403; 1 Denio, 223, 603; 24 Wend., 40, 527; 19 Wend., 24; 15 Wend., 336, 347, 461; 14 Wend., 247; 13 Wend., 307; 10 Wend., 426; 9 Wend., 273; 4 Wend., 657; 3 Wend., 187; 7 Cow., 264; 4 Cow., 423; 12 Johns. R., 105; 11 Johns. R., 223; 10 Johns. R., 244; 4 Johns. R., 416, 422; 4 Johns. Ch. R., 659; 22 How. Pr. R., 67; 17 How. Pr. R., 9; 13 How. Pr. R., 157; 8 How. Pr. R., 141; 12 Abb. Pr., 313; 10 Abb. Pr., 368; 8 Abb. Pr., 403; 4 Sandf. S. C., 31, 215, 611; 5 Duer, 87; 3 Duer, 395; 1 Duer, 193, 412; 1 E. D. Smith, 33, 146; 35 Barb., 575; 57 N. Y., 12; 55 N. Y., 495, 601; 54 N. Y., 440; 38 N. Y., 189; 2 Abb. Ct. App. Dec., 154; 4 Lana., 117; 4 Bosw., 207; 3 Daly, 527; 5 Abb., N. S., 230; 1 Sweeny, 238; 2 Robt., 349; 63 How. Pr., 378; 14 W. D., 59, 166; 15 W. D., 134; 17 W. D., 542; 23 W. D., 60; 13 Abb. N. C., 340; 9 Daly, 25, 268; 10 Daly, 338; 12 Daly, 407; 15 J. & S., 374; 17 J. & S., 421; 18 J. & S., 63; 27 Hun, 63, 141; 31 id., 476; 33 id., 214; 34 id., 115; 36 id., 52; 37 id., 384; 38 id., 307; 39 id., 364; 41 id., 1, 577; 40 N. Y., 473; 81 N. Y., 251; 82 N. Y., 431; 86 N. Y., 484; 89 N. Y., 508, 616; 93 N. Y., 278; 97 N. Y., 230, 569; 98 N. Y., 425; 99 N. Y., 29; 100 N. Y., 558; 101 N. Y., 644; 104 N. Y., 414; 13 Daly, 390, 34; 44 Hun, 232, 446.

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Contracts
for sale of
personal
property.

§ 3. Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or more, shall be void, unless,
1. A note or memorandum of such contract, be made in writing, and be subscribed by the parties to be charged thereby; or,
2. Unless the buyer shall accept and receive part of such goods, or the evidences, or some of them, of such things in action; or,
3. Unless the buyer shall, at the time, pay some part of the purchase money.

1 Hun, 400; 4 Hun, 565; 1 T. & C., 3; 51 N. Y., 652; 6 Hun, 285; 37 N. Y., 375; 53 N. Y., 114; 49 N. Y., 24; 73 N. Y., 252; 6 Daly, 429; 61 N. Y., 1; 65 N. Y., 484; 68 N. Y., 598; 49 N. Y., 684; 63 N. Y., 587; 14 Hun, 149; 7 Daly, 410; 68 N. Y., 598; 4 Hun, 709; 7 J. & S., 383; 14 Hun, 303; 17 Hun, 135; 8 J. & S., 122; 6 Hun, 229; 73 N. Y., 695; 67 N. Y., 97; 60 N. Y., 413; 67 N. Y., 538; 74 N. Y., 621; 22 Hun, 483; 5 Lana., 180, 248; 45 How. Pr. R., 348; 3 Daly, 365; 2 Robt., 344; 48 N. Y., 19; 48 N. Y., 499; 3 Bosw., 180; 1 Hun, 402; 49 Barb., 69; 47 Barb., 556; 4 Robt., 26, 220, 322, 402; 24 N. Y., 58; 56 N. Y., 234; 3 Abb. Ct. App. Dec., 250; 1 id., 188, 282; 6 N. Y., 11; 5 N. Y., 542; 4 N. Y., 585; 1 N. Y., 90, 265, 295, 497; 32 Barb., 631; 19 Barb., 456; 18 Barb., 523; 16 Barb., 277; 12 Barb., 572; 11 Barb., 38; 10 Barb., 74, 572; 4 Barb., 451; 1 Barb., 385; 5 Hill, 205; 1 Duer, 48; 26 Wend., 347; 28 Wend., 270; 20 Wend., 433; 17 Wend., 336; 13 Wend., 112; 5 Wend., 141; 3 Wend., 53, 112; 2 Duer, 497; 1 Duer, 277; 5 Sandf. S. C., 105; 2 Sandf., 239; 8 Cow., 219; 12 Johns. R., 57; 3 Johns. R., 398; 83 N. Y., 519; 43 Barb., 341; 39 Barb., 622; 31 How. Pr. R., 6; 30 How. Pr. R., 426; 14 W. D., 377; 17 W. D., 445, 463; 20 W. D., 144, 575; 21 W. D., 48; 13 Abb. N. C., 215, 326; 12 Daly, 230, 523; 9 Daly, 563, 605; 33 Hun, 214, 553; 34 Hun, 814; 36 Hun, 481; 40 Hun, 415; 86 N. Y., 332; 87 Hun, 610; 93 N. Y., 337; 94 N. Y., 431; 96 N. Y., 561; 97 N. Y., 52, 220; 100 N. Y., 140; 101 N. Y., 515, 604; 84 N. Y., 549.

[1 R. L., 75, § 15.]

§ 4. Whenever goods shall be sold at public auction, and the auctioneer shall, at the time of sale, enter in a sale-book, a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale is made, such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

Sales at
auction.

26 Wend., 351; 19 Wend., 550; 12 Wend., 552; 10 Paige, 537; 2 Abb. Pr., 235; 1 Duer, 132; 14 Johns. R., 484; 25 How. Pr. R., 482; 46 N. Y., 64; 56 Barb., 643; 55 N. Y., 495; 53 N. Y., 677; 56 N. Y., 530; 8 Daly, 261.

§ 5. Every sale made by a vendor, of goods and chattels in his possession, or under his control, and every assignment of goods and chattels, by way of mortgage or security, or upon any condition whatever, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession, of the things sold, mortgaged or assigned, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or the creditors of the person making such assignment, or subsequent purchasers in good faith; and shall be conclusive evidence of fraud, unless it shall be made to appear, on the part of

Delivery
and posses-
sion neces-
sary to cer-
tain trans-
fers of
goods, &c.

TITLE 3. the persons claiming under such sale or assignment, that the same was made in good faith, and without any intent to defraud such creditors or purchasers.

17 N. Y., 28; 10 N. Y., 810; 4 N. Y., 308, 580; 1 N. Y., 496; 25 Barb., 428; 20 Barb., 27; 19 Barb., 455; 17 Barb., 316; 15 Barb., 598; 13 Barb., 326; 12 Barb., 530; 9 Barb., 440; 8 Barb., 123; 6 Barb., 94; 4 Hill, 162, 272; 1 Hill, 449; 26 Wend., 511; 25 Wend., 308; 24 Wend., 116; 23 Wend., 658; 21 Wend., 118; 20 Wend., 19; 19 Wend., 183, 515; 17 Wend., 55, 494; 16 Wend., 523; 15 Wend., 213, 629; 12 Wend., 298; 8 Wend., 378; 6 Wend., 402; 3 Wend., 446; 7 Cow., 86; 5 Cow., 166; 4 T. & C., 280; 8 Bosw., 174; 10 id., 432; 5 Duer, 230, 441; 2 Duer, 99; 13 Abb. Pr., 155; 3 Sandf., 73; 2 Sandf., 594; 8 How. Pr. R., 310; 10 Johns. R., 363; 25 How. Pr. R., 513; 56 N. Y., 8; 55 N. Y., 107; 37 N. Y., 610; 3 Hun, 68; 1 Sweeney, 383; 56 N. Y., 273; 63 Barb., 311; 4 J. & S., 58; 65 Barb., 227; 55 N. Y., 107; 71 N. Y., 206; 19 Hun, 173; 7 Daly, 410; 71 N. Y., 391, 614; 20 Hun, 416; 75 N. Y., 251; 79 N. Y., 19; 77 N. Y., 461; 10 Daly, 450; 25 Hun, 504; 31 Hun, 606; 33 Hun, 562; 66 N. Y., 332; 43 Hun, 148.

Who to be deemed creditors.
2 Robt., 944, 439; 63 Barb., 318; 18 J. & S., 130; 108 N. Y., 115.
Two last sections qualified.

§ 6. The term "creditors," as used in the last section, shall be construed to include all persons, who shall be creditors of the vendor or assignor, at any time whilst such goods and chattels shall remain in his possession or under his control.

§ 7. Nothing contained in the two last sections shall be construed to apply to contracts of bottomry or respondentia, nor to assignments or hypothecations of vessels or goods, at sea, or in foreign ports.

Agents.

§ 8. Every instrument required by any of the provisions of this title, to be subscribed by any party, may be subscribed by the lawful agent of such party.

12 N. Y., 371; 10 Paige, 537; 5 Sandf., 101; 47 Barb., 175; 42 N. Y., 490; 60 Barb., 25; 13 Abb. N. C., 212, 248; 16 J. & S., 130; 33 Hun 571.

L. 1882, Chap. 324—An act relative to debts discharged in bankruptcy.

New promise must be in writing and signed by debtor. SECTION 1. That no subsequent or new promise hereafter made by any person duly discharged in bankruptcy to pay any debt so discharged in bankruptcy shall revive such debt against the person so discharged, unless such subsequent or new promise shall be contained in some writing signed by the person to be charged thereby.

TITLE III.

General Provisions.

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- SEC. 1. Instruments relating to real or personal property, made to defraud, void.
2. Grants and assignments of trusts, to be in writing.
3. Instruments void as to creditors, to be void as to their representatives, etc.
4. Fraudulent intent, a question of fact; want of consideration not conclusive.
5. Certain purchasers not to be affected by fraud, without notice thereof.
6. Meaning of terms "lands," and "estate and interest in lands."
7. Meaning of term "conveyance."
8. This chapter not to affect instruments, etc., already executed.

Conveyances, etc., made with intent to hinder or defraud creditors, void.

SECTION 1. Every conveyance, or assignment, in writing or otherwise, of any estate or interest in lands, or in goods or things in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay or defraud creditors or other persons, of their lawful suits, damages, forfeitures, debts or

demands, and every bond or other evidence of debt given, suit commenced, decree or judgment suffered, with the like intent, as against the persons so hindered, delayed or defrauded, shall be void.

TITLE 3.

4 Abb. Ct. App. Dec., 94; 52 Barb., 272; 2 Daly, 372; 36 How. Pr. R., 74; 4 Robt., 171; 10 Bosw., 13, 419, 645; 5 Bosw., 363; 3 Robt., 343; 66 How. Pr., 46; 52 Id., 505; 18 Hun, 134, 355, 463; 68 N. Y., 74; 9 Hun, 514; 17 Hun, 103; 53 How. Pr. R., 250, 405; 19 Hun, 392; 54 Id., 47; Hun, 563; 5 Hun, 110; 12 Hun, 306; 2 Abb. N. C., 222; 3 Hun, 605; 61 N. Y., 626; 7 Hun, 146; 63 N. Y., 499; 18 J. & S., 615; 7 Abb. N. C., 240; 23 Hun, 573; 23 Hun, 45; Id., 95; Id., 648; 17 N. Y., 9, 22; 15 N. Y., 9; 14 N. Y., 569; 9 N. Y., 150, 213; 6 N. Y., 515; 32 Barb., 240; 24 Barb., 120; 23 Barb., 550; 21 Barb., 55, 123, 469; 19 Barb., 176, 455; 18 Barb., 274, 549, 612; 17 Barb., 316; 16 Barb., 544; 15 Barb., 56, 560, 569, 618; 14 Barb., 39; 12 Barb., 163; 9 Barb., 256; 6 Barb., 91, 470; 4 Barb., 232, 332, 346; 3 Barb. Ch., 645; 6 Hill, 438; 1 Denio, 185. 4 Denio, 174, 217, 287; 4 Wend., 100; 3 Wend., 411; 5 Cow., 554; 18 Johns. R., 427, 516; 4 Sandf. S. C., 283; 20 How. Pr. R., 123, 339; 15 How. Pr. R., 95, 355; 14 How. Pr. R., 11; 12 How. Pr. R., 117; 6 Abb., 368; 3 Duer, 166; 2 Duer, 362, 523; 3 Sandf., 69; 27 N. Y., 603; 25 How. Pr. R., 573; 17 W. D., 81, 238, 619; 18 W. D., 24, 186; 16 Abb. N. C., 46; 17 J. & S., 70; 27 Hun, 200, 359; 31 Hun, 65, 230; 36 Hun, 167; 34 Hun, 460; 38 Hun, 167; 39 Hun, 29; 88 N. Y., 418; 96 N. Y., 75; 99 N. Y., 451; 101 N. Y., 229; 84 N. Y., 523; 42 Hun, 221, 528; 45 Hun, 411; 104 N. Y., 575; 105 N. Y., 171, 476.

§ 2. Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent lawfully authorised, shall be void.

Grants of trusts to be in writing. 10 Barb., 346; 5 Johns. Ch. R., 11.

§ 3. Every conveyance, charge, instrument or proceeding declared to be void, by the provisions of this chapter, as against creditors or purchasers, shall be equally void against the heirs, successors, personal representatives or assignees, of such creditors or purchasers.

Certain conveyances, etc., void as to heirs, etc. 4 Hill, 273; 101 N. Y., 519, 644.

§ 4. The question of fraudulent intent in all cases arising under the provisions of this chapter, shall be deemed a question of fact and not of law; nor shall any conveyance or charge be adjudged fraudulent as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

Certain rules applicable to cases under this chapter.

60 Barb., 68; 10 Bosw., 13, 423; 1 Bosw., 317; 7 Bosw., 490; 2 Abb., N. S., 304; 6 T. & C., 323; 65 N. Y., 73; 53 How. Pr. R., 342; 7 Hun, 591; 16 Hun, 168; 14 N. Y., 567; 9 N. Y., 213; 4 N. Y., 368, 560; 15 Barb., 56; 18 Barb., 336; 12 Barb., 530; 4 Denio, 174; 23 Wend., 654; 19 Wend., 184, 445; 15 Wend., 213; 11 Wend., 251; 3 Paige, 564; 4 Sandf., 233; 3 Sandf. S. C., 69; 5 Duer, 320; 2 Duer, 99; 15 How. Pr. R., 365; 33 N. Y., 649; 44 Barb., 194; 25 How. Pr. R., 578; 39 N. Y., 167; 24 N. Y., 364, 620; 65 Barb., 233; 22 W. D., 430; 21 J. & S., 101; 31 Hun, 274; 37 Hun, 359; 34 Hun, 70; 36 Hun, 79; 37 Hun, 313; 39 Hun, 280; 41 Hun, 248; 86 N. Y., 421; 92 N. Y., 538, 637; 93 N. Y., 17; 13 Daly, 223.

§ 5. The provisions of this chapter shall not be construed, in any manner, to affect or impair the title of a purchaser for a valuable consideration, unless it shall appear, that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Id., as to purchasers.

21 N. Y., 168; 17 N. Y., 23; 25 Barb., 431; 3 Duer, 166; 44 Barb., 267; 39 Barb., 98; 2 Robt., 498; 25 Hun, 554; 31 Hun, 606; 38 Hun, 478; 40 Hun, 329; 89 N. Y., 446; 100 N. Y., 168; 88 N. Y., 418.

§ 6. The term "lands," as used in this chapter, shall be construed as co-extensive in meaning, with "lands, tenements and hereditaments;" and the terms "estate and interest in lands," shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in lands, as above defined.

Id., as to certain terms. 26 Wend., 559.

§ 7. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, (except a last will and testament) whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands, is created, aliened, assigned, or surrendered.

Id. term "conveyance."

TITLE 8. § 8. The provisions of this chapter shall not extend to any conveyance, charge, contract, assignment, instrument or proceeding, had, made, executed or commenced, before this chapter shall be in force as a law.

(188)
Id.; as to
prior
deeds, &c.
7 Lans.,
388.

L. 1858, Chap. 314—An act to declare and extend the powers of executors, assignees, receivers and other trustees, and to protect the rights of creditors and others, against frauds, and for other purposes.

Trustees, etc., may impeach assignments. SECTION 1. That any executor, administrator, receiver, assignee, or other trustee of an estate, or the property and effects of an insolvent estate, corporation, association, partnership or individual, may for the benefit of creditors or others interested in the estate or property so held in trust, disaffirm, treat as void, and resist all acts done, transfers and agreements made, in fraud of the rights of any creditor, including themselves and others, interested in any estate or property held by or of right belonging to any such trustee or estate.

42 N. Y., 255; 72 N. Y., 424; 18 Hun, 187; 18 Abb. N. C., 334; 16 Abb. N. C., 47; 19 J. & S., 144; 24 Hun, 467; 26 Hun, 292, 353; 29 Hun, 146; 33 Hun, 267; 28 Hun, 418; 33 Hun, 557; 21 J. & S., 532; 30 Hun, 227; 35 Hun, 128; 37 Hun, 628; 39 Hun, 284; 41 Hun, 163; 43 Hun, 164; 46 Hun, 628; 99 N. Y., 168, 538; 103 N. Y., 115, 302; 18 Abb. N. C., 334.

And have actions against offenders § 2. That every person who shall, in fraud of the rights of creditors and others, have received, taken, or in any manner interfered with, the estate, property or effects of any deceased person, or insolvent corporation, association, partnership or individual, shall be liable in the proper action to the executors, administrators, receivers or other trustees of such estate or property, for the same, or the value of any property or effects so received or taken, and for all damages caused by such acts to any such trust estate.

51 N. Y., 554; 42 N. Y., 255; 6 Lans., 31; 3 Daly, 26.

[Section 3 was repealed by L. 1880, ch. 245.]

CHAPTER VIII.

OF THE DOMESTIC RELATIONS.

TITLE I.—OF HUSBAND AND WIFE.

[Supplementary Title.

TITLE 1^A.—Married women's rights and liabilities.]

TITLE II.—OF PARENTS AND CHILDREN.

[Supplementary Titles.

TITLE 2^A.—Adoption.TITLE 2^B.—Registry of births, marriages and deaths.]

TITLE III.—OF GUARDIANS AND WARDS.

TITLE IV.—OF MASTERS, APPRENTICES AND SERVANTS.

TITLE I.

Of Husband and Wife.

ART. 1.—Of marriage, and of the solemnization and proof thereof.

ART. 2.—Of divorces, on the ground of the nullity of the marriage contract.

[Repealed.]

ART. 3.—Of divorces, dissolving the marriage contract.

ART. 4.—Of separations, or limited divorces.

[Repealed.]

ART. 5.—General provisions, applicable to the two last articles.

[Repealed.]

ARTICLE FIRST.

OF MARRIAGE, AND OF THE SOLEMNIZATION AND PROOF THEREOF.

- SEC. 1. Marriage a civil contract; consent essential to its validity.
 2. [Repealed.] 2. (New section.) Age of consent fixed.
 3. Certain marriages between relations, incestuous and void.
 4. At what time marriages without consent, etc., to be deemed void.
 5. Polygamy forbidden.
 6. Marriages contracted during absence of wife, etc., from what time void.
 7. Pardons not to restore to conjugal rights, or to guardianship.
 8. By whom marriages to be solemnized, in order to be registered.
 9. Form of marriage; witnesses necessary.
 10. Facts to be ascertained by minister, etc.; book to be kept.
 11. Identity of parties about to be married, to be ascertained.
 12. Penalty on ministers, etc., solemnizing marriages in certain cases.
 13. Certificate of marriage to be given; its contents.
 14. Certificate when and where to be filed and entered.
 15. When certificate of ministers may be filed and entered.
 16. Contents of the entry of every certificate.
 17. Effect of certificate, entry and copies thereof, as evidence.
 18. Fees of clerk of town or city.
 19. This article not to apply to Quakers.

SECTION 1. Marriage, so far as its validity in law is concerned, shall continue in this state a civil contract, to which the consent of parties, capable in law of contracting, shall be essential. Marriage, its requisites.

4 N. Y., 230; 8 Paige, 574; 7 Wend., 47; 20 Johns. R., 1; 18 Johns. R., 346; 4 Johns. R., 52.

[Section 2 was repealed by L. 1830, ch. 320.]

TITLE 1.

Age of consent fixed.

[1839]
Certain marriages incestuous.
4 Johns. Ch. R., 343;
8 Abb. N. C., 383; id., 444.

Certain marriages void after their nullity declared.
17 Abb. N. C., 286; 4 Dem., 232.

Polygamy forbidden.
15 Abb. N. S., 317; 2 Hun, 242; 4 T. & C., 449;
11 N. Y., 230; 30 Barb., 55;
5 Barb., 121; 34 N. Y., 644; 44 Barb., 198;
26 Barb., 63; 5 Redf., 492; 29 Hun, 551; 30 N. Y., 602; 92 N. Y., 147;
101 N. Y., 40; 36 N. Y., 18.

Marriages during absence of husband or wife.

Conjugal rights, &c., not restored by pardon.

Who to solemnize certain marriages.
17 Abb. N. C., 408.

§ 2. The age of legal consent for contracting marriage shall be eighteen years in the case of males and sixteen years in the case of females. [*This new § 2 inserted by L. 1887, ch. 24.*]

§ 3. Marriages between parents and children, including grandparents and grand-children of every degree, ascending and descending, and between brothers and sisters of the half, as well as of the whole, blood, are declared to be incestuous and absolutely void. This section shall extend to illegitimate, as well as legitimate children and relatives.

§ 4. When either of the parties to a marriage shall be incapable, for want of age or understanding, of consenting to a marriage, or shall be incapable from physical causes, of entering into the marriage state, or when the consent of either party shall have been obtained by force or fraud, the marriage shall be void, from the time its nullity shall be declared, by a court of competent authority.

18 Johns. R., 346; 20 id., 1; 7 Wend., 47; 2 Bradf., 424; 1 id., 409; Hopk., 408; 4 Johns. R., 32; 4 id., 23, 343; 15 Abb., N. S., 19; 2 Sweeney, 319; 8 Paige, 594; 4 N. Y., 230; 3 Bradf., 453, 509.

§ 5. No second, or other subsequent marriage, shall be contracted by any person, during the life-time of any former husband or wife of such person, unless,

1. The marriage with such former husband or wife, shall have been annulled or dissolved, for some cause other than the adultery of such person: or,

2. Unless such former husband or wife, shall have been finally sentenced to imprisonment for life:

Every marriage contracted in violation of the provisions of this section, shall, except in the case provided for in the next section, be absolutely void.

[1 R. L., 118; 1 R. L., 411, § 17; 2 R. L., 198, § 1.]

§ 6. If any person whose husband or wife shall have absented himself or herself, for the space of five successive years, without being known to such person to be living during that time, shall marry during the life-time of such absent husband or wife, the marriage shall be void only from the time that its nullity shall be pronounced by a court of competent authority.

47 How. Pr. R., 94; 8 Paige, 609; 1 Abb. Ct. App. Dec., 223; 16 Abb., N. S., 112; 7 Daly, 460; 30 Barb., 55; 6 Paige, 209; 1 Johns. Ch. R., 330, 486; 24 How. Pr. R., 213; 3 Dem., 329; 28 N. Y., 336; 32 Hun, 290; 33 Hun, 78; 101 N. Y., 40; 29 Hun, 551.

§ 7. No pardon granted since the twelfth day of April, one thousand eight hundred and twenty-two, and no pardon hereafter granted, to any person, who has been, or shall be, sentenced, to imprisonment for life in this state, shall be deemed to restore such person, to the rights of any previous marriage, or to the guardianship of any children, the issue of such marriage.

[L. 1882, 203.]

§ 8. For the purpose of being registered and authenticated according to the provisions of this title, marriages shall be solemnized only by the following persons:

1. Ministers of the gospel or of legally incorporated religious congregations, the leader of the society for ethical culture in the city of New York, and priests of every denomination.

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2. Mayors, recorders and aldermen of cities.

3. Judges of the county courts and justices of the peace, and

4. Justices and judges of courts of record. [*Thus amended by L. 1888, ch. 78, superseding L. 1877, ch. 430, and L. 1887, ch. 77.*]

§ 9. When solemnized by a minister or priest, the ceremony of marriage shall be according to the forms and customs of the church or society to which he belongs. When solemnized by a magistrate, no particular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate and the attending witness or witnesses, that they take each other as husband and wife. In every case there shall be at least one witness, besides the minister or magistrate, present, at the ceremony.

Form of marriage.

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Witnesses necessary. 2 Sweeny, 319; 7 Daly, 308; 7 Abb. N. C. 98; 34 Hun. 86.

§ 10. It shall be the duty of every minister, priest, or magistrate, required to solemnize a marriage, to ascertain,

Facts to be ascertained by minister, &c. 25 N. Y., 397.

1. The Christian and surnames of the parties; their respective places of residence; and that they are of sufficient age to be capable in law of contracting marriage;

2. The names and places of residence of two of the attesting witnesses, if more than one be present; and if not, the name, and place of residence, of such witness:

He shall enter the facts so ascertained, and the day on which such marriage is solemnized, in a book to be kept by him for that purpose. [*This section thus amended by L. 1830, ch. 320, § 25.*]

Entry in his book.

§ 11. If either of the parties, between whom the marriage is to be solemnized, shall not be personally known to him, the minister or magistrate shall ascertain from the respective parties their right to contract marriage, and, for that purpose, he may examine the parties, or either of them, or any other person under oath, which he is hereby authorized to administer, which examination shall be reduced to writing and subscribed by the parties; and either of the respective parties making a false statement under this oath shall be deemed guilty of wilful and corrupt perjury, and shall be liable therefor. [*Thus amended by L. 1873, ch. 25.*]

Duty of minister or magistrate where parties are not personally known to him.

§ 12. Every minister or magistrate who shall solemnize a marriage, where either of the parties, within his knowledge, shall be under the age of legal consent, or an idiot or lunatic; or to which, within his knowledge, any legal impediment exists, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by which he shall be tried.

Penalty for solemnizing marriages, in certain cases.

§ 13. Whenever a marriage shall have been solemnized within this state pursuant to this title, the minister or magistrate by whom the marriage was solemnized, shall furnish on request, to either party, a certificate thereof, specifying,

Certificate of marriage.

1. The names and places of residence of the parties married, and that they were known to such minister or magistrate, or were satisfactorily proved, by the oath of the parties themselves or a person known to him, that they were the persons described in such certificate, and that they were of sufficient age to contract marriage.

2. The name and place of residence of the attesting witness or witnesses; and,

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3. The time and place of such marriage :

The certificate shall also state, that after due inquiry made, there appeared no lawful impediment to such marriage; and it shall be signed by the person making it. [*This section thus amended by L. 1873, ch. 25.*]

Where and when to be filed and entered.

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22 W. D., 508.

§ 14. Every such certificate signed by a magistrate, if presented to the clerk of the city or town where the marriage was solemnized, or to the clerk of the city or town where either of the parties reside, within six months after such marriage, shall be filed by such clerk, and shall be entered in a book to be provided by him, in the alphabetical order of the names of both the parties, and in the order of time in which such certificate shall be filed.

When certificate of minister may be filed, &c.

§ 15. Every such certificate signed by a minister, may also be filed and recorded in like manner, if there be endorsed thereon or annexed thereto, a certificate of any magistrate residing in the same county with such clerk, setting forth that the minister by whom such certificate is signed, is personally known to such magistrate, and has acknowledged the execution of the certificate in his presence; or that the execution of such certificate, by a minister or priest of some religious denomination, was proved to such magistrate, by the oath of a person known to him, and who saw the certificate executed.

Contents of entry of certificate.

22 W. D., 508.

§ 16. The entry of every such certificate shall specify,

1. The names and places of residence of the persons married :
2. The time and place of marriage :
3. The name and official station of the person signing the certificate : and,
4. The time when the certificate was filed. [*This section thus amended by L. 1830, ch. 320.*]

Certificate, entry, &c., evidence.

20 W. D., 438.

§ 17. Every such original certificate, the original entry thereof made as above directed, and a copy of such certificate, or of such entry, duly certified, shall be received in all courts and places, as presumptive evidence of the fact of such marriage.

Clerk's fees.

§ 18. There shall be allowed to every clerk of a city or town, for filing and entering a certificate of marriage, twenty-five cents; and ten cents for a copy of such certificate, or of the entry thereof.

Quakers excepted from this article.

1 Redf., 383.

§ 19. The provisions of this article, relative to the solemnization and proof of marriages, shall not apply to the people called Quakers, whose marriages may continue to be solemnized in the manner and agreeably to the regulations of their societies. Nor shall the provisions of this article be construed to require the parties to any marriage, or any minister or magistrate to solemnize the same in the manner herein prescribed; but all lawful marriages contracted in the manner heretofore in use in this state, shall be as valid as if this article had not been passed. [*Thus amended by L. 1887, ch. 77.*]

ARTICLE SECOND.

[142, 143]

OF DIVORCES, ON THE GROUND OF THE NULLITY OF THE MARRIAGE CONTRACT.

[This entire article was repealed by L. 1880, ch. 245.]

ARTICLE THIRD.

[144, 146]

OF DIVORCES, DISSOLVING THE MARRIAGE CONTRACT.

Sec. 38-48. [Repealed.]

49. After divorce for adultery, complainant may marry; but not defendant unless, etc.

[Sections 38 to 48 were repealed by L. 1880, ch. 245.]

§ 49. Whenever a marriage has been or shall be dissolved, pursuant to the provisions of this article, the complainant may marry again during the lifetime of the defendant; but no defendant convicted of adultery shall marry again until the death of the complainant, unless the court in which the judgment of divorce was rendered shall in that respect modify such judgment, which modification shall only be made upon satisfactory proof that the complainant has remarried, that five years have elapsed since the decree of divorce was rendered; and that the conduct of the defendant since the dissolution of said marriage has been uniformly good. [Thus amended by L. 1879, ch. 321. See, also, Code Civ. Proc., § 1761, covering in part the same ground.]

Marriages
after di-
vorce for
adultery.

5 Barb., 117; 11 N. Y., 328; 34 N. Y., 643; 43 N. Y., 546; 2 Hun, 241, 4 T. & C., 451; 3 T. & C., 717; 8 Abb. N. C., 171; 8 Abb. N. C., 400; id., 450; 37 Hun, 158; 20 Hun, 520; 90 N. Y., 602; 92 N. Y., 146; 86 N. Y., 18.

[2 R. L., 197, § 4.]

ARTICLE FOURTH.

[146, 147]

OF SEPARATIONS, OR LIMITED DIVORCES.

[This entire article was repealed by L. 1880, ch. 245.]

ARTICLE FIFTH.

[147, 148]

GENERAL PROVISIONS APPLICABLE TO THE TWO LAST ARTICLES.

[This entire article was repealed by L. 1880, ch. 245.]

[Supplementary Title.]

TITLE 1^A.*Married Women's Rights and Liabilities.***L. 1835, Chap. 275—An act in relation to powers of attorney executed by married women for the conveyance of real estate.**

How to be proved or acknowledged. SECTION 1. When any married woman, residing out of this state, shall have joined or shall join with her husband, in executing any power of attorney for the conveyance of real estate situated in this state, the conveyance executed in virtue of such power shall have the same force and effect as if executed by such married woman in her own proper person; provided that the execution of such power of attorney by such married woman shall first have been duly proved or acknowledged, according to the provisions of the Revised Statutes in relation to conveyances executed by married women residing out of this state.

L. 1840, Chap. 80—An act in respect to insurances for lives for the benefit of married women.

May insure life of husband. SECTION 1. It shall be lawful for any married woman, by herself, and in her name, or in the name of any third person, with his assent, as her trustee, to cause to be insured, for her sole use, the life of her husband for any definite period, or for the term of his natural life; and in case of her surviving her husband, the sum or net amount of the insurance becoming due and payable, by the terms of the insurance, shall be payable to her, to and for her own use, free from the claims of the representatives of her husband, or of any of his creditors; but such exemption shall not apply where the amount of premium annually paid shall exceed three hundred dollars.

1 Barb. Ch., 268; 3 Bradf., 139; 26 N. Y., 15; 43 N. Y., 287; 11 Abb. N. C., 145; 26 Hun, 150, 288; 85 N. Y., 593; 86 N. Y., 11; 90 N. Y., 402; 100 N. Y., 372; 102 N. Y., 143; 22 J. & S., 312.

[See L. 1858, ch. 187, *post*, p. 2602.]

When payable to children. § 2. In case of the death of the wife, before the decease of her husband, the amount of the insurance may be made payable after her death to her children for their use, and to their guardian, if under age.

22 J. & S., 312.

L. 1845, Chap. 11 — An act in relation to patent rights.

Rights of married women. SECTION 1. Every married woman, being a resident of this state, who shall receive a patent for her own invention, pursuant to the laws of the United States, may hold and enjoy the same, and all the proceeds, benefits and profits thereof, and of such invention, to her own separate use free and independent of her husband and his creditors; and may transfer and dispose thereof, and in every respect perform all acts in relation thereto, in the same manner as if she were unmarried; but this act shall not authorize such married woman to contract any pecuniary obligations to be discharged at any future time.

L. 1848, Chap. 200 — An act for the more effectual protection of the property of married women.

Property of females to be married, secured. SECTION 1. The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues and profits thereof, shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property, as if she were a single female.

54 N. Y., 280; 61 N. Y., 139; 47 N. Y., 357; 3 Bosw., 328; 24 N. Y., 372; 23 N. Y., 259; 23 N. Y., 15, 111, 451; 18 N. Y., 268; 12 N. Y., 208; 31 Barb., 316, 372, 532; 29 Barb., 382, 514, 646; 28 Barb., 343, 625; 24 Barb., 411, 581; 22 Barb., 371; 21 Barb., 289, 546, 552, 561; 18 Barb., 159, 562, 565; 17 Barb., 157, 660; 16 Barb., 144, 556; 15 Barb., 446, 555; 14 Barb., 247, 531; 12 Barb., 655; 10 Barb., 598; 9 Barb., 366; 4 Barb., 298; 3 Barb., 622; 2 Hilt., 431, 482; 1 Hilt., 476; 3 E. D. Smith, 310; 3 Bosw., 334; 2 Sandf., 415; 35 N. Y., 512; 33 N. Y., 521; 32 N. Y., 423; 27 N. Y., 277; 26 N. Y., 46; 25 N. Y., 328; 47 Barb., 155; 44 Barb., 268, 274, 378; 43 Barb., 92, 580; 42 Barb., 310, 378, 572; 41 Barb., 112, 468; 35 Barb., 80; 30 How. Pr. R., 195; 28 How. Pr. R., 320; 26 How. Pr. R., 30, 251, 370, 496; 17 Abb. Pr., 14; 16 J. & S., 233; 30 Hun, 133, 338; 40 Hun, 233; 92 N. Y., 152; 100 N. Y., 328; 83 N. Y., 575; 88 N. Y., 299; 25 Hun, 213, 242.

Property of females now married, secured. § 2. The real and personal property, and the rents issues and profits thereof of any female now married shall not be subject to the disposal of her husband; but shall be her sole and separate property as if she were a single female except so far as the same may be liable for the debts of her husband heretofore contracted.

4 Abb. Ct. App. Dec., 634.

May take by gift, grant or devise. § 3. Any married female may take by inheritance or by gift, grant, devise or bequest, from any person other than her husband and hold to her sole and separate use and convey and devise real and personal property, and any interest or estate therein, and the rents, issues and profits thereof in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts. [*Thus amended by L. 1849, ch. 375.*]

63 Barb., 67; 59 id., 506; 55 id., 130; 52 id., 474; 17 Abb. Pr., 14; 4 Lans., 421; 12 Abb., N. S., 220; 9 id., 109, 447; 1 Robt., 1; 2 id., 119, 447; 7 Bosw., 480; 3 Hun, 692; 51 Barb., 202; 40 N. Y., 405; 54 N. Y., 280; 35 N. Y., 512; 47 N. Y., 357; 35 Hun, 267; 40 Hun, 233; 41 Hun, 475.

Contracts validated. § 4. All contracts made between persons in contemplation of marriage shall remain in full force after such marriage takes place.

54 N. Y., 442; 18 N. Y., 258; 12 N. Y., 425; 32 Barb., 251; 2 Hilt., 431, 482; 1 Hilt., 476; 3 E. D. Smith, 300; 3 Bosw., 334; 40 Hun, 304.

L. 1849, Chap. 375 — An act to amend an act entitled "An act for the more effectual protection of the property of married women," passed April 7, 1848.

[Section 1 amends L. 1848, ch. 200, § 3.]

When trusts may be annulled. § 2. Any person who may hold or who may hereafter hold as trustee for any married women, any real or personal estate or other property under any deed of conveyance or otherwise, on the written request of such married women, accompanied by a certificate of a justice of the supreme court that he has examined the condition and situation of the property, and made due enquiry into the capacity of such married women to manage and control the same, may convey to such married women by deed or otherwise, all or any portion of such property, or the rents, issues or profits thereof, for her sole and separate use and benefit.

47 N. Y., 357; 40 N. Y., 405; 35 N. Y., 512; 51 Barb., 202; 31 Barb., 133, 316, 372, 532; 35 N. Y., 507; 34 N. Y., 296; 32 N. Y., 631; 27 N. Y., 277; 26 N. Y., 46; 25 N. Y., 328;

47 Barb., 155; 44 Barb., 378; 42 Barb., 310, 378-572; 41 Barb., 93; 39 Barb., 421, 485; 30 How. Pr. R., 195; 28 How. Pr. R., 320; 26 How. Pr. R., 251, 370, 496; 34 Hun, 95; 30 Hun, 332; 97 N. Y., 421; 83 N. Y., 575; 100 N. Y., 328.

Marriage contracts. § 3. All contracts made between persons in contemplation of marriage shall remain in full force after such marriage takes place.

18 N. Y., 258; 12 N. Y., 425; 32 Barb., 251; 2 Hilt., 431, 482; 1 Hilt., 476; 3 E. D. Smith, 800; 3 Bosw., 334; 54 N. Y., 437; 7 Abb. N. C., 246; 35 Hun, 270; 40 Hun, 304; 41 Hen, 477; 92 N. Y., 235; 96 N. Y., 201; 43 Hun, 597.

L. 1851, Chap. 321—An act authorizing married women who may be members or stockholders of any incorporated company, to vote at elections of directors and trustees.

Married women, when to vote on stock. SECTION 1. It shall be lawful for any married woman, being a stockholder or member of any bank, insurance company, (other than mutual fire insurance companies), manufacturing company, or other institution incorporated under the laws of this state, to vote at any election for directors or trustees by proxy or otherwise, in such company of which she may be a stockholder or member.

L. 1853, Chap. 576—An act relating to debts contracted by women before marriage.

Action, how maintained. SECTION 1. An action may be maintained against the husband and wife, jointly, for any debt of the wife contracted before marriage, but the execution on any judgment in such action shall issue against, and such judgment shall bind the separate estate and property of the wife only, and not that of the husband.

21 Barb., 290; 27 How. Pr. R., 375; 65 Barb., 413.

Husband liable in certain cases. § 2. Any husband who may hereafter acquire the separate property of his wife, or any portion thereof by any ante-nuptial contract, or otherwise, shall be liable for the debts of his wife contracted before marriage, to the extent only of the property so acquired, as if this act had not been passed.

L. 1858, Chap. 187—An act to amend an act entitled "An act for the benefit of married women in insuring the lives of their husbands."

May insure life of husband. SECTION 1. It shall be lawful for any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, to cause to be insured, for her sole use, the life of her husband, for any definite period, or for the term of his natural life; and, in case of her surviving such period or term, the sum or net amount of the insurance becoming due and payable, by the terms of the insurance, shall be payable to her to and for her own use, free from the claims of the representatives of the husband, or of any of his creditors, or any party or parties claiming by, through or under him. But when the premium paid in any year out of the property or funds of the husband shall exceed five hundred dollars, such exemption from such claims shall not apply to so much of said premium so paid as shall be in excess of five hundred dollars, but

such excess, with the interest thereon, shall inure to the benefit of his creditors. [*Thus amended by L. 1870, ch. 277.*]

43 N. Y., 287; 1 Barb. Ch., 268; 3 Bradf., 189; 59 N. Y., 387; 100 N. Y., 372.

Loss, how payable. § 2. The amount of the insurance may be made payable in case of the death of the wife before the period at which it becomes due, to her husband or to his, her or their children, for their use, as shall be provided in the policy of insurance and to their guardian if under age. [*Thus amended by L. 1866, ch. 656.*]

85 N. Y., 591; 86 N. Y., 11; 24 Hun, 355; 26 Hun, 150.

L. 1860, Chap. 90—An act concerning the rights and liabilities of husband and wife.

Married woman may hold property, collect rents, etc. SECTION 1. The property, both real and personal, which any married woman now owns, as her sole and separate property; that which comes to her by descent, devise, bequest, gift or grant; that which she acquires by her trade, business, labor or services, carried on or performed on her sole or separate account; that which a woman married in this state owns at the time of her marriage, and the rents, issues and proceeds of all such property, shall, notwithstanding her marriage, be and remain her sole and separate property, and may be used, collected and invested by her in her own name, and shall not be subject to the interference or control of her husband, or liable for his debts, except such debts as may have been contracted for the support of herself or her children, by her as his agent.

42 Barb., 69, 118, 532, 572; 41 Barb., 564; 26 Barb., 55; 25 How. Pr. R., 463; 24 How. Pr. R., 32; 9 Abb., N. S., 109, 447; 3 Daly, 197; 4 Abb., N. S., 372; 8 id., 835; 53 Barb., 615; 53 N. Y., 93, 425; 52 N. Y., 432; 51 N. Y., 138; 48 N. Y., 212; 45 N. Y., 230; 2 Abb. Ct. App. Dec., 492; 3 id., 280; 4 Lans., 164; 40 How. Pr. R., 33; 15 Abb., N. S., 103; 61 N. Y., 579; 8 Hun, 305; 19 Hun, 119; 14 Abb. N. C., 333, 341; 64 How. Pr., 87; 26 Hun, 258; 41 Hun, 447; 93 N. Y., 17; 96 N. Y., 538; 101 N. Y., 77; 85 N. Y., 516; 92 N. Y., 152; 100 N. Y., 328.

Married woman may bargain, sell and transfer her separate property. § 2. A married woman may bargain, sell, assign and transfer her separate personal property, and carry on any trade or business, and perform any labor or services on her sole and separate account, and the earnings of any married woman, from her trade, business, labor or services, shall be her sole and separate property, and may be used or invested by her in her own name.

35 Barb., 80; 26 How. Pr. R., 30; 16 Abb. Pr., 328; 65 Barb., 158; 54 N. Y., 343; 49 N. Y., 47; 48 N. Y., 212; 44 N. Y., 345; 54 N. Y., 652; 6 T. & C., 440; 56 N. Y., 462; 64 N. Y., 539; 74 N. Y., 356; 69 N. Y., 87; 68 N. Y., 329; 73 N. Y., 260; 67 Barb., 566; 19 Hun, 280, 550, 595; 74 N. Y., 116, 182; 76 N. Y., 504, 196; 75 N. Y., 103; 8 Abb. N. C., 253; 22 Hun, 15, 310; 23 Hun, 403, 87, 184; 13 Abb. N. C., 428; 37 Hun, 140, 405; 96 N. Y., 524, 538.

May bargain, sell and convey real and personal property. § 3. Any married woman possessed of real estate as her personal property, may bargain, sell and convey such property and enter into any contract in reference to the same, with the like effect in all respects as if she were unmarried, and she may in like manner enter into such covenant or covenants for title as are usual in conveyances of real estate, which covenants shall be obligatory to bind her separate property, in case the same or any of them be broken. [*Thus amended by L. 1862, ch. 172.*]

35 N. Y., 507; 34 N. Y., 296; 4 Robt., 429; 58 Barb., 622; 47 Barb., 155; 3 Lans., 120; 42 How., 176; 2 Daly, 401; 65 Barb., 158; 16 Hun, 141; 13 Hun, 377; 14 Hun, 153; 75 N.

Y., 108; 63 N. Y., 612; 25 Hun, 33, 644; 38 Hun, 220; 85 N. Y., 516; 86 N. Y., 448; 97 Hun, 26; rev'd 89 N. Y., 644.

[Sections 4-6 were repealed by L. 1862, ch. 172.]

[Section 7 was repealed by L. 1880, ch. 245.]

Her bargains not to bind husband. § 8. No bargain or contract made by any married woman, in respect to her sole and separate property, or any property, which may hereafter come to her by descent, devise, bequest, purchase, or the gift or grant of any person (except her husband), and no bargain or contract entered into by any married woman in or about the carrying on of any trade or business, under any statute of this state, shall be binding upon her husband, or render him or his property in any way liable therefor. [*Thus amended by L. 1862, ch. 172.*]

3 Daly, 293; 45 N. Y., 230; 53 N. Y., 425; 1 T. & C., 140; 1 Robt., 112; 35 How. Pr. R., 279; 4 Lans., 164, 421; 9 Abb., N. S., 359; 47 N. Y., 578; 53 N. Y., 97; 48 N. Y., 212; 35 N. Y., 511; 2 Abb. Ct. App. Dec., 492; 62 Barb., 536; 58 Barb., 622; 55 Barb., 418; 47 Barb., 155; 15 Abb., 279; 18 W. D., 316; 30 Hun, 255; 35 Hun, 270; 96 N. Y., 538.

[Sections 9-11 were repealed by L. 1862, ch. 172.]

L. 1862, Chap. 172 — An act to amend the act entitled “An act concerning the rights and liabilities of husband and wife,” passed March twentieth, eighteen hundred and sixty.

[Sections 1 to 4 amended L. 1860, ch. 90.]

[Section 5 was repealed by L. 1880, ch. 245.]

Mother to give consent to apprenticing child. § 6. No man shall bind his child to apprenticeship or service or part with the control of such child or create any testamentary guardian therefor, unless the mother if living, shall in writing signify her assent thereto. *

55 How. Pr. R., 494; 24 Hun, 370.

[Section 7 was repealed by L. 1880, ch. 245.]

L. 1870, Chap. 277 — An act to amend an act entitled “An act to amend an act entitled ‘An act for the benefit of married women in insuring the lives of their husbands,’” passed April fourteenth, eighteen hundred and fifty-eight.

[Section 1 amends L. 1853, ch. 187, § 1.]

How policies may be surrendered; or bequeathed, etc. § 2. Any policy in favor of a married woman, or of her and her children, or assigned in her, or in her and their favor, on written request of said married woman, duly acknowledged before a commissioner of deeds, or other officer authorized to take acknowledgments of deeds, in the same manner as required by law, to pass her dower right in lands of her husband, and on the written request of the policy holder may be surrendered to and purchased by the company issuing the same in the same manner as any other policy. And such married woman may, in case she have no child or children born of her body, or any issue of any child or children born of her body, dispose of such policy in and by a last will and testament, or any instrument in the nature of a last will and testament, or by deed duly executed and acknowledged before an officer authorized to take acknowledgments of deeds, in the same manner as required by law to pass her dower right in lands of her husband, which disposition lawfully made shall invest the person or persons to whom such policy shall have been so bequeathed, or granted and conveyed, with the same rights in

* Probably superseded in part by the amendments to tit. 3, § 1, of this chapter. See *post*, p. 2612.

respect thereto as such married woman would have had in case she survived the person on whose life such policy was issued, and such legatee or grantee shall have the same right to dispose of such policy as herein conferred on such married woman. [*Thus amended by L. 1873, ch. 821.*]

43 N. Y., 287; 1 Barb., 268; 3 Bradf., 139; 53 How. Pr. R., 471; 15 Abb. N. C., 75; 26 Hun, 288; 33 Hun, 425; 100 N. Y., 327; 102 N. Y., 266; 22 J. & S., 312.

L. 1878, Chap. 300—An act relating to powers of attorney by married women.

Powers of attorney of married women. SECTION 1. Any married woman being a resident of this state, and of the age of twenty-one years or more, may execute, acknowledge and deliver her power of attorney with like force and effect and in the same manner as if she were a single woman.

L. 1879, Chap. 248—An act for the relief of policy-holders in life insurance companies.

Assignment of policies for benefit of married women. SECTION 1. All policies of insurance heretofore or hereafter issued within the state of New York upon the lives of husbands for the benefit and use of their wives in pursuance of the laws of the state, shall be, from and after the passage of this act, assignable by said wife with the written consent of her husband; or in case of her death by her legal representatives, with the written consent of her husband, to any person whomsoever, or be surrendered to the company issuing such policy, with the written consent of the husband.

26 N. Y., 9; 38 Hun, 360; 90 N. Y., 492; 100 N. Y., 872; 102 N. Y., 266; 22 J. & S., 309; 103 N. Y., 617.

L. 1880, Chap. 472—An act in relation to the partition of lands held by husband and wife as joint tenants, tenants in common, or as tenants by entireties.

Husband and wife may voluntarily partition. SECTION 1. Whenever husband and wife shall hold any lands or tenements as tenants in common, joint tenants, or as tenants by entireties, they may make partition or division of the same between themselves, and such partition or division, duly executed under their hands and seals, shall be valid and effectual; and when so expressed in the instrument of partition or division, such instrument shall bar the right of dower of the wife in and to the lands and tenements partitioned or divided to the husband.

35 Hun, 271; 100 N. Y., 12.

L. 1880, Chap. 487—An act to amend chapter seven hundred and seventeen of the laws of eighteen hundred and seventy, entitled "An act to authorize the sale of real estate in which any widow is or shall be entitled to dower in satisfaction and discharge thereof."

Amendment. SECTION 1. Section seven of chapter seven hundred and seventeen of the laws of eighteen hundred and seventy, entitled "An act to authorize the sale of real estate in which any widow is or shall be entitled to dower in satisfaction and discharge thereof," is hereby amended so as to read as follows:

Dower interest of lunatic widow in real estate may be converted into money for her support when personal estate insufficient. § 7. Whenever the personal estate of any insane or lunatic widow entitled to dower in any real estate shall be insufficient for the payment of her debts, or for her support, or when it appears to be for the best interest and advantage of the estate of any such insane or lunatic widow that her dower interest in any real estate should be converted into money, her committee may apply to the supreme court by petition, praying for authority to institute an action in the name of such insane or lunatic widow, under and in accordance with the provisions of the act hereby amended, to procure the sale of the real estate which is or shall be subject to her dower, in order that such dower right may be satisfied by the payment to such committee of a gross sum in lieu thereof. Such petition shall set forth the particulars as to the amount of such personal estate; the estimated value of such dower right, and an account of the debts and demands existing against such widow, or against her estate, together with such reasons as may exist for making the application. If, upon the presentation of such petition, the court shall become satisfied that the representations and allegations therein contained are true, it may in its discretion make an order granting the prayer of such petitioner for the authority herein specified. The consent to accept a sum in lieu of dower, required by the first section of the act hereby amended, may be executed and acknowledged by the committee of any such lunatic or insane doweress; and when so executed and acknowledged by such committee, shall be as effectual as if the same had been done by such doweress in person while of sound mind. The gross sum of money, in satisfaction and lieu of such dower, shall be paid to such committee upon giving such further security therefor as the court may require. And such committee shall account for such money so received by him as if the same had originally formed a part of the personal estate of such lunatic or insane widow.

[The act (L. 1870, ch. 717), of which this act amends the seventh section, was wholly repealed by L. 1880, ch. 245; but as this act was subsequent to the repealing act, the editor will not undertake to determine the effect thereof. See also Code Civ. Proc., §§ 1617-1624.]

L. 1884, Chap. 381—An act in relation to the rights and liabilities of married women.

Married woman may make contracts as if single except with her husband. SECTION 1. A married woman may contract to the same extent, with like effect and in the same form as if unmarried, and she and her separate estate shall be liable thereon, whether such contract relates to her separate business or estate or otherwise, and in no case shall a charge upon her separate estate be necessary.

37 Hun, 227; 101 N. Y., 434.

§ 2. This act shall not affect nor apply to any contract that shall be made between husband and wife.

L. 1887, Chap. 537—An act to authorize and empower a husband to convey directly to his wife and a wife directly to her husband.

Direct conveyance of real property authorized. SECTION 1. Any transfer or conveyance of real estate hereafter made by a married man directly to his wife, and every transfer or conveyance of real estate hereafter made directly by a married woman to her husband, shall not be invalid because such transfer or conveyance was made directly from one to the other without the intervention of a third person.

35 Hun, 207.

TITLE II.

Of Parents and Children.

- SEC. 1. Wife living separate from husband may have *habeas corpus* for minor children.
2. Custody of minor child may be given to mother.
 3. Order may be annulled, varied or modified.
 4. *Habeas corpus* may be issued for children detained by Shakers.
 5. When search warrant for concealed child to be issued.
 6. Custody of child, to whom awarded; orders may be revoked, etc.
 7. Penalty for secreting, etc., or carrying child out of the state.

SECTION 1. When any husband and wife shall live in a state of separation, without being divorced, and shall have any minor child of the marriage, the wife, if she be an inhabitant of this state, may apply to the supreme court for a *habeas corpus*, to have such minor child brought before it.

24 Barb., 524; 2 How. Pr. E., 61; 2 Duer, 48; 19 Wend., 17; 5 Redf., 501.

[149]

§ 2. On the return of such writ, the court on due consideration, may award the charge and custody of the child, so brought before it, to the mother, for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require.

24 Barb., 524; 3 Hill, 405; 2 Duer, 48; 19 Wend., 18; 18 Wend., 637; 44 How. Pr. E., 14; 74 N. Y., 299.

§ 3. At any time after the making of such order, the supreme court may annul, vary or modify the same.

2 How. Pr.

Order may be annulled, &c. E., 61.

§ 4. Whenever application shall be made to the chancellor, a justice of the supreme court, or any circuit judge, by any husband or any wife, representing that his wife, or her husband, has attached himself or herself to the society of Shakers, and detains a child of the marriage between them, the officer shall inquire into the circumstances; and if satisfied by due proof of the facts represented, he shall allow a writ of *habeas corpus* to bring such child before him.

Habeas corpus for children detained by Shakers.

[L. 1818, p. 88.]

§ 5. If, upon the return of any writ of *habeas corpus* so issued, it shall appear that any child therein mentioned cannot be found, and satisfactory proof be made to the officer issuing such writ, that such child is secreted or concealed, by or among any society of Shakers in this state, he may issue his warrant, directed to the sheriff of the county where the said child is suspected to be, commanding such sheriff, in the day-time, to search the dwelling-houses and other buildings, of such society, or of any members thereof, or any other building or dwelling-house specified in the warrant, for such child, and to bring him before such officer; and the sheriff shall forthwith execute such warrant.

If child concealed, search warrant may be issued.

[The same.]

TITLE 2.

To whom
custody of
child may
be award-
ed.

Orders
may be an-
nulled, &c.

§ 6. When such child is brought before such officer, he may award the charge and custody thereof, to that parent who shall not have joined the society of Shakers, for such time, under such regulations, and with such provisions and directions, as he shall deem proper. Every such order may at any time, on sufficient cause shown, be annulled, varied or modified, by the officer who made the same; or in case of his being absent, or not exercising the duties of the office, then by any other officer who might have originally made such order.

[The same.]

Penalty for
carrying
child out of
state, se-
creting it,
&c.

§ 7. If any member of the society of Shakers, or any other person, shall send or carry, or cause to be sent or carried, any such child out of this state, or shall secrete such child, or cause such child to be secreted, within this state, so that such writ cannot be executed, the person so offending shall be deemed guilty of a misdemeanor, and on conviction, shall be fined not exceeding two hundred dollars, or be imprisoned not more than six months, or both.

[Supplementary Title.]

TITLE 2^A.

Adoption.

L. 1873, Chap. 830—An act to legalize the adoption of minor children by adult persons.

"Adoption" defined. SECTION 1. Adoption, as provided for in this act, is the legal act whereby an adult person takes a minor into the relation of child, and thereby acquires the rights and incurs the responsibilities of parent in respect to such minor.

81 Hun, 839; 96 N. Y., 382.

Any minor child may be adopted. § 2. Any minor child may be adopted by any adult, in the cases and subject to the rules prescribed in this act.

17 Hun, 457.

Who may adopt. § 3. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; and a married woman, not lawfully separated from her husband, cannot adopt a child without the consent of her husband.

Consent of child. § 4. The consent of a child, if over the age of twelve years, is necessary to its adoption.

Consent of parents. § 5. Except in the cases provided for in the next section, a legitimate child cannot be adopted without the consent of its parents, if living, or

the survivor, if one is dead; nor an illegitimate child without the consent of its mother, if she is living.

When not necessary. § 6. The consent provided for by the last section is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery or cruelty, and who is from either cause divorced; or is adjudged to be an insane person or an habitual drunkard, or is judicially deprived of the custody of the child on account of cruelty or neglect.

Consent of persons having custody. § 7. When the child to be adopted has neither father nor mother living, or whose consent, if living, is made unnecessary by the provisions of the last section, such consent must be given by an adult person having the lawful custody of the child.

Proceedings before county judge. § 8. The person adopting a child, and the child adopted, and the other persons whose consent is necessary, shall appear before the county judge of the county in which the person adopting resides, and the necessary consent shall thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated, in all respects, as his own lawful child should be treated. But in case such parent shall not be or reside in said county, such consent may be signed, duly acknowledged and certified in the manner required for conveyances of real estate, to entitle them to be recorded in said county, and such consent shall be presented to such county judge, and filed with the said agreement, and such parent shall not be required to appear before such county judge. [*Thus amended by L. 1888, ch. 485.*]

Examination of persons. § 9. The judge shall examine all persons appearing before him pursuant to the last section, each separately, and, if satisfied that the moral and temporal interests of the child will be promoted by the adoption, he shall make an order in which shall be set forth, at length, the reasons for such order, directing that the child shall thenceforth be regarded and treated, in all respects, as the child of the person adopting.

Name of child, etc. § 10. A child, when adopted, shall take the name of the person adopting, and the two thenceforth shall sustain toward each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation, including the right of inheritance, and the heirs and next of kin of the child so adopted shall be the same as if the said child was the legitimate child of the person so adopting, except that as respects the passing and limitation over of real and personal property, under and by deeds, conveyances, wills, devises and trusts, dependent upon the person adopting dying without heirs, said child adopted shall not be deemed to sustain the legal relation of child to the person so adopting so as to defeat the rights of remainderman, and in case of the death of the person so adopted the person so adopting as above provided shall, for the purpose of inheritance, sustain the relation of parent to the person so adopted. [*Thus amended by L. 1887, ch. 703.*]

When parent to forfeit claims. § 11. Whenever a parent has abandoned or shall abandon an infant child such parent shall be deemed to have forfeited all claim that he or she would otherwise have, as to the custody of said child or otherwise, against any person who has taken, adopted and assumed the maintenance of such child; and in such case the person so adopting, taking and assuming the maintenance of such child, may adopt it under the provisions of this act, with the same effect as if the consent of such parents had been obtained. In all cases of abandonment after this act takes effect the person adopting shall proceed under the provisions of this act within six months after he or she has assumed the maintenance of such child; in such case of abandonment, the county judge may make the order provided for in this act without the consent of such parent or parents.

After adoption parents relieved from care, etc. § 12. The parents of an adopted

child are, from the time of the adoption, relieved from all parental duties toward, and of all responsibility for, the child so adopted, and have no rights over it.

Not to affect proof of adoption heretofore made by any method practiced in this state; evidence. § 13. Nothing herein contained shall prevent proof of the adoption of any child, heretofore made according to any method practiced in this state, from being received in evidence, nor such adoption from having the effect of an adoption hereunder; but no child shall hereafter be adopted except under the provisions of this act, nor shall any child that has been adopted be deprived of the rights of adoption, except upon a proceeding for that purpose, with the like sanction and consent as is required for an act of adoption under the eighth section hereof; and any agreement and consent in respect to such adoption, or abrogation thereof hereafter to be made, shall be in writing, signed by such county judge or a judge of the supreme court, and the same, or a duplicate thereof, shall be filed with the clerk of the county and recorded in the book of miscellaneous records, wherein the same shall be made, and a copy of the same, certified by such clerk, may be used in evidence in all legal proceedings; but nothing in this act contained in regard to such adopted child inheriting from the person adopting shall apply to any devise or trust now made or already created, nor shall this act in any manner change, alter or interfere with such will, devise, or said trust or trusts, and as to any such will, devise or trust said adopted child shall not be deemed an heir so as to alter estates, or trusts, or devises in wills already made or trusts already created.

[Supplementary Title.]

TITLE 2^d.

Registry of Births, Marriages and Deaths.

[For additional provisions on this subject, see part 1, ch. 14, tit. 6^A, *ante*, p. 1194.]

L. 1847, Chap. 152—An act providing for the registry of births, marriages and deaths.

[Repealed by L. 1885, ch. 270, § 9, *ante*, p. 1210.]

L. 1853, Chap. 75—An act to amend an act entitled “An act providing for the registry of births, marriages and deaths.”

[Quere, whether this act is repealed by L. 1885, ch. 270, § 9, *ante*, p. 1210.]

Registry to be kept by clergymen and others, and report to city inspector, New York.
SECTION 1. It shall be the duty of the clergymen, magistrates and other persons who perform the marriage ceremony in the city of New York, to keep a registry of the marriages celebrated by them, which shall contain, as near as the same can be ascertained, the name and surname of the parties married; the residence, age and condition of each; whether single or widowed. It shall also be the duty of physicians and professional midwives to keep a registry of the several births in which they have assisted professionally, which shall contain, as near as the same can be ascertained, the time of such birth, name, sex and color of the child, the names and residence of the parents, and to report the same, on or before the first Monday of each and every month, to the city inspector of the city of New York; and physicians who have attended deceased persons in their last illness shall, in

the certificate of the decease of such person, specify, as near as the same can be ascertained, the name and surname, age, occupation, term of residence in said city, place of nativity, condition in life; whether single, married, widow or widower; color, last place of residence, and the direct and indirect cause of death of such deceased person; and the coroners of the city and county of New York, in such cases as an inquest may have been held, shall in their certificates conform to the requirements of this section of this act.

City inspector of New York to keep a record. § 2. The city inspector of the city of New York shall keep a record of the births, marriages and deaths reported to him; the births shall be numbered and recorded in the order in which they are received by the recording officer; and the record of births shall state, in separate columns, the place and date of birth, the name, sex and color of the child, the names and residences of the parents, as fully as he has received the same, and the time when the record was made. The marriages shall be numbered and recorded in the order in which they are received by the recording officer, and the record thereof shall state, in separate columns, the date of marriage, name, residence and official station, if any, of the person by whom married, the names and surnames of the parties, age, the color and condition of each; whether single or widowed; and the time when the record was made. The deaths shall be likewise numbered and recorded; and the record thereof shall state, in separate columns, as far as the same is reported, the date of decease, name and surname, condition; whether single, married or widowed; age, place of birth, place of death, occupation, names of the parents, when an infant without name, disease, direct or indirect cause of death, color, and last place of residence of such deceased person, and the time when the record was made.

[Sections 3 to 6 repealed by L. 1881, ch. 537.]

Penalty for not complying with the directions of this act. § 7. Every person who shall neglect or refuse to comply with or violate the provisions of this act, shall forfeit and pay for each offence the sum of fifty dollars, to be sued for and recovered in the name of the mayor, aldermen and commonalty of the city of New York, and the penalty when recovered shall be paid over, one-half thereof to the corporation of the city of New York, and one-half to the party making complaint thereof.

Repeal. § 8. All such parts of the act entitled "An act providing for the registry of births, marriages and deaths," passed April 28, 1847, as relates to the city of New York, conflicting or inconsistent with the provisions of this act, is hereby repealed.

Act when to take effect, etc. § 9. This act shall take effect on the first day of July next, before which time the secretary of state shall cause a copy of the same to be officially published in at least one of the papers published in the city of New York, with a notice to all magistrates, clergymen, physicians and other persons interested, of the time when it will become a law.

L. 1880, Chap. 259—An act to secure the registration of the births of children of residents of the city of New York, and the birth of children which failed to be recorded through the neglect of the physician or other medical attendant present at such birth, occurring during the temporary absence from such city of the parents of such children, and respecting transcripts of the records.

Registration of births. SECTION 1. The births of the children of actual residents of the city of New York which may have occurred during the temporary absence of the parents of such children from the city of New York, and the births of

children which fail to be recorded through the neglect of the physician or other medical attendant present at such birth, may be recorded under and pursuant to the provisions of this act in the bureau of vital statistics of the health department of said city, in a special book to be kept for such purpose, upon application in such behalf by the parents or guardians of such children. Transcripts of any record in the said bureau of vital statistics may be given, in the discretion of the board of health, to a parent or the next of kin to any person whose birth, death or marriage is there recorded, or to any one person authorized to apply for the same, but no transcripts of false or fraudulent returns made to the said bureau, nor of the entries thereof, shall be given; and they shall be cancelled upon due proof of the facts to the board of health.

Application for registry; how to be made; alterations not to be made except on proof.
 § 2. Such application shall be made to the board of health of the health department of such city, and shall be accompanied by a certificate of the physician or midwife attending professionally at such birth, and personally cognizant thereof, together with the affidavit of at least two citizens certifying to their knowledge of the facts, and that the physician or midwife making such certificate of birth is a reputable person in good standing in the community in which he or she may reside. No change or alteration shall at any time be made in any of the records of the said bureau of records in said city without proof satisfactory to and upon the approval of the said board of health.

16 J. & S., 308.

TITLE 2.

TITLE III.

Of Guardians and Wards.

- SBC. 1. Fathers may dispose of the custody, etc., of their minor children.
 2 & 3. Rights and duty of person appointed guardian.
 4-19. [Repealed.]
 20. Duties and liabilities of all general guardians.
 21. Penalty on guardians for waste, etc.
 22. [Repealed.]

(150)
 Father,
 etc., may
 grant cus-
 tody of mi-
 nor child.
 23 Barb.,
 472; 19
 Wend., 18;
 5 Johns.
 Ch. R., 279;
 12 How.
 Pr. R., 515;
 57 Barb.,
 498; 55
 How. Pr.
 R., 594; 16
 Hun, 143;
 9 Hun, 175;
 11 Hun, 41;
 5 Redf., 501;
 24 Hun, 370.

SECTION I. Every father, whether of full age or a minor, of a child likely to be born or of any living child under the age of twenty-one years and unmarried, may by his deed or last will duly executed, dispose of the custody and tuition of such child during its minority or for any less time, to any person or persons in possession or remainder. But if the mother of such child survive the father for one year, whether such appointment be now made or shall hereafter be made by the father, she may after the lapse of such year notwithstanding such appointment by the father, by her deed or last will duly executed, dispose of the custody and tuition of such child during its minority or for any less time, to any person or persons in possession or remainder, and she may make the same appointment at any time if the father dies without having executed his said right of appointment, and section two thousand eight hundred and fifty-one of the Code of Civil Procedure shall apply on any such appointment. [Thus amended by L. 1888, ch. 454, superseding L. 1871, ch. 32.]*

Powers
 and duties
 of person

§ 2. Every such disposition, from the time it shall take effect, shall vest in the person or persons to whom it shall be made, all the

* The act of 1888, instead of amending this section, purports to amend the act of 1871.

rights and powers, and subject him or them to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody or tuition of such minor, as guardian in soccage, or otherwise.

[1 R. L., 368, §§ 18, 19.]

§ 3. Any person to whom the custody of any minor is so disposed of, may take the custody and tuition of such minor, and may maintain all proper actions, for the wrongful taking or detention of the minor, and shall recover damages in such actions, for the benefit of his ward. He shall also take the custody and management of the personal estate, of such minor, and the profits of his real estate, during the time for which such disposition shall have been made, and may bring such actions in relation thereto, as a guardian in soccage might by law.

[The same.]

[Sections 4-6 were repealed by L. 1880, ch. 245.]

[Section 7 was repealed by L. 1880, ch. 320.]

[Sections 8-19 were repealed by L. 1880, ch. 245.]

§ 20. Every guardian in soccage, and every general guardian, whether testamentary or appointed, shall safely keep the things that he may have in his custody belonging to his ward, and the inheritance of his ward, and shall not make or suffer any waste, sale or destruction of such things or of such inheritance, but shall keep up and sustain the houses, gardens and other appurtenances to the lands of his ward, by and with the issues and profits thereof, or with such other monies belonging to his ward, as shall be in his hands; and shall deliver the same to his ward when he comes to his full age, in as good order and condition, at least, as such guardian received the same, inevitable decay and injury only excepted; and he shall answer to his ward for the issues and profits of real estate, received by him, by a lawful account.

[1 R. L., 62, § 1.]

§ 21. If any guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, he shall lose the custody of the same, and of such ward, and shall forfeit to the ward thrice the sum at which the damages shall be taxed by the jury.

[The same.]

[Section 22 was repealed by L. 1880, § 245.]

TITLE IV.

Of Masters, Apprentices and Servants.

ART. 1.—Of apprentices and servants bound by indentures.

ART. 2.—Of persons held in service.

[Repealed.]

ART. 3.—General provisions.

[Supplementary Articles.]

ART. 3^a.—General regulations affecting employers and employees. The factory inspector, and his powers and duties.

ART. 3^b.—Provisions relating to disputes between employers and employees. The state board of mediation and arbitration, and its powers and duties.]

TITLE 3.
appointed.
23 Barb.,
472.

Id. to bring
actions, &c.
23 Barb.,
472; 8
Barb., 52;
56 Barb.,
199; 4
Robt., 559,
94, 114, 473.

[151-153]

Duties and
liabilities
of all gen-
eral guar-
dians.
11 Barb.,
25; 8 Barb.,
52; 2
Wend., 77;
46 N. Y.,
596; 57
Barb., 308;
63 Barb.,
271; 58 N.
Y., 185; 17
Hun, 541;
36 Hun, 157.

Penalty for
waste, &c.

TITLE 4.

(154)

ARTICLE FIRST.

OF APPRENTICES AND SERVANTS BOUND BY INDENTURES.

- SER. 1. How and for what term minors may bind themselves as apprentices, etc.
 2. By whom consent to such binding to be given.
 3. Consent how signified.
 4. Executors, in certain cases, may bind out minors.
 5. Who may be bound out by county superintendents of the poor.
 6. Who may be bound out by overseers of poor of a town.
 7. Consent of a justice necessary to binding out Indian children.
 8. Age of infants to be inserted in indentures.
 9. Money paid, etc., on binding out, to be stated in indentures.
 10. Special agreement to be inserted in indentures by overseers, etc.
 11. Duplicates of indentures by overseers and superintendents, where to be deposited.
 12. Indentures by foreigners being minors.
 13. How to be acknowledged and certified.
 14. When and how such indentures may be assigned.

Who may
bind them-
selves as
appren-
tices, &c.

For what
terms.

SECTION I. Every male infant, and every unmarried female under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may of his or her own free will, bind himself or herself, in writing, to serve as clerk, apprentice or servant in any profession, trade or employment; if a male, until the age of twenty-one years, and if a female, until the age of eighteen years, or for any shorter time; and such binding shall be as valid and effectual, as if such infant was of full age, at the time of making such engagement.

25 Barb., 207; 13 Barb., 296; 13 Barb., 473; 9 Barb., 313; 7 Barb., 153; 2 Barb., 206; 5 Cow., 363, 527; 19 Johns. R., 113; 14 Johns. R., 374; 8 Johns. R., 338; 6 Johns. R., 374; 66 N. Y., 444; 57 Barb., 291; 35 Hun, 38; 39 Hun, 73.

[1 R. L., 135, §§ 2, 4 and 14.]

Who to
consent to
such bind-
ing.
9 Barb.,
313; 5 Cow.,
529; 14
Johns. R.,
375; 43 N.
Y., 45; 56
N. Y., 444;
39 Hun, 73.

§ 2. Such consent shall be given,

1. By the father of the infant. If he be dead, or be not in a legal capacity to give his consent, or if he shall have abandoned and neglected to provide for his family, and such fact be certified by a justice of the peace of the town, and endorsed on the indenture, then,

2. By the mother. If the mother be dead, or be not in a legal capacity to give such consent, or refuse, then,

3. By the guardian of such infant duly appointed. If such infant have no parent living, or none in a legal capacity to give consent, and there be no guardian, then,

4. By the overseers of the poor, or any two justices of the peace of the town, or any judge of the county courts of the county, where such infant shall reside.

[The same.]

Consent to
be in writ-
ing, &c.
2 Hill, 597;
5 Cow., 176;
39 Hun, 73.

§ 3. Such consent shall be signified in writing, by the person entitled to give the same, by a certificate at the end of, or endorsed upon, the indentures, and not otherwise.

[The same.]

When exe-
cutors may
bind out
minors.

§ 4. The executors of any last will of a father, who shall be directed in such will to bring up his child to some trade or calling, may bind such child to service, as a clerk or apprentice, in like manner as the father might have done, if living.

[The same.]

§ 5. The county superintendents of the poor, in the several counties, may bind out any child, under the ages above specified, who shall be sent to any county poor-house, or who is or shall become chargeable, or whose parent or parents are or shall become chargeable, to such county, to be clerks, apprentices or servants, until such child, if a male, shall be twenty-one years old, or, if a female, shall be eighteen years old; which binding shall be as effectual, as if such child had bound himself with the consent of his father.

[L. 1826, 290.]

§ 6. The overseers of the poor of any town or city, may, in like manner, bind out any such child, who, or whose parent or parents, shall become chargeable to such town or city, or who shall have been sent to any poor-house, other than a county poor-house, with the consent in writing, of any two justices of the peace of the town, or of the mayor, recorder and aldermen of any city, or of any two of them.

[1 R. L., 135, §§ 2, 4 and 14.]

§ 7. No child of an Indian woman shall be bound as an apprentice, under the provisions of this title, except in the presence and with the consent of a justice of the peace; a certificate of which consent signed by the justice, shall be filed with the clerk of the town in which the indenture of apprenticeship shall be executed.

[The same.]

§ 8. The age of every infant so bound shall be inserted in the indentures, and shall be taken to be the true age, without further proof thereof; and whenever any public officers are authorised to execute any indentures, or their consent is required to the validity of the same, it shall be their duty to inform themselves fully, of the infant's age.

[1 R. L., 135, §§ 5, 6 and 7.]

§ 9. Every sum of money paid or agreed for, with, or in relation to, the binding out of any clerk or apprentice, shall be inserted in the indentures.

[The same.]

§ 10. Whenever any child shall be bound out by the county superintendents of the poor of any county, or by the overseers of the poor of any city or town, the indentures shall contain an agreement on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and if a male, will cause him to be instructed in the general rules of arithmetic; and every such indenture shall also contain an agreement, that the master will give to such apprentice, at the expiration of his or her service, a new bible.

[The same.]

§ 11. The counterpart of any indentures executed by the county superintendents of the poor, shall be by them deposited in the office of the clerk of the county; and the counterpart of such indentures executed by any overseers of the poor, shall be by them deposited in the office of the clerk of their city or town.

[1 R. L., 136, § 4; L. 1826, 290.]

ART. 1.

When county superintendents may bind out infants.
3 How. Pr. R., 39; 13 Johns. R., 270; 35 N. Y., 473; 66 N. Y., 76; 14 Abb. N. S., 414; 60 N. Y., 385.

When overseers of poor.
6 Cow., 658; 1 Redf., 816; 14 Abb. N. S., 423.

Indian children.

Age of infants to be inserted in indentures.
1 Sandf., 712.

Money paid, &c., to be inserted.

Special agreement to be inserted, in certain cases.
14 Abb. N. S., 425; 1 Tuck., 361.

Certain indentures, where to be deposited.

TITLE 4.
 Indentures
 by foreign-
 ers being
 minors.
 [156]
 25 Barb.,
 207.

§ 12. Any person coming from any foreign country beyond sea, may bind himself to service, if an infant, until he attain the age of twenty-one years, or for a shorter term. Such contract for service, if made for the purpose of raising money to pay his passage, or for the payment of such passage, may be for the term of one year, although such term may extend beyond the time when such person will be of full age; but it shall in no case be for a longer term.

[1 R. L., 137, § 8.]

To be ac-
 knowl-
 edged, &c.
 25 Barb.,
 204.

§ 13. No contract made under the last section, shall bind the servant, unless it be acknowledged by him before some mayor, recorder, or alderman of a city, or before some justice of the peace; nor, unless a certificate of such acknowledgment, and that the same was made freely, on a private examination, be endorsed upon such contract.

[The same.]

How as-
 signed.
 1 Tuck
 361.

§ 14. The contracts specified in the two last sections, may be assigned by the master, by an instrument in writing endorsed thereon, executed in the presence of two witnesses; if such assignment be approved of, in writing, by any magistrate mentioned in the preceding section, and such approbation shall be also endorsed on the contract.

[The same.]

L. 1871, Chap. 934 — An act in reference to apprentices and employers.

Consent of legal guardian before taking a minor as apprentice; indentures in writing; by whom executed. SECTION 1. On and after the passage of this act, it shall not be lawful for any person or persons in this state to employ or take as an apprentice any minor person to learn the art or mystery of any trade or craft without first having obtained the consent of such person's legal guardian or guardians; nor shall any minor person be taken as an apprentice aforesaid unless an agreement or indenture be drawn up in writing, in accordance with the provisions of this act, and duly executed under seal by the person or persons employing said apprentice, and also by the parents or parent, if any be living, or by the guardian or guardians of said apprentice, and likewise by said minor person so becoming an apprentice.

Contents of indentures. § 2. Said agreement or indenture, in order to make the law valid, shall contain the following covenants and provisions:

Must be bound for a term of years. 1. That said minor person shall be bound to serve his employer or employers for a term of not less than three nor more than five years.

Shall not leave during term of apprenticeship; may compel return of apprentice. 2. That said minor person so indentured shall not leave his said employer or employers during the term for which he shall be indentured, and if any said apprentice so indentured as aforesaid shall leave his said employer or employers, except as hereinafter provided, the said employer or employers may compel the return of the said apprentice under the penalties of this act.

Agreement of employer in indentures; must give certificate in writing stating full service of apprenticeship. 3. That said employer or employers shall covenant and agree in said indenture to provide at all times during the continuance of the same suitable and proper board, lodging and medical attendance for said apprentice, and said employer or employers shall also further covenant and agree to teach or cause to be carefully and skillfully taught to his or their said apprentice every branch of his or their business to which said apprentice may be

indentured, and said employer or employers shall be further bound, at the expiration of said apprenticeship, to give to said apprentice a certificate in writing stating that said apprentice has served a full term of apprenticeship of not less than three or more than five years, at such trade or craft as may be specified in said indenture.

Non-compliance deemed a misdemeanor; penalty; factory inspector to prosecute. § 3. Any person or persons taking an apprentice without complying with the provisions of this act shall be deemed guilty of a misdemeanor; and on conviction thereof before any magistrate or court having jurisdiction, held in the county in which the business of said employer or employers may be conducted, shall be subject to a fine of not less than five hundred dollars, the fine to be paid to the treasurer of the said county, for the use and benefit of said county. It shall be the duty of the factory inspector and the deputy factory inspectors to see to it that the duties and obligations of employers to their apprentices are observed and enforced, to enforce this act, and to prosecute such employers for a failure to perform such duties and obligations, or any violation of this act. [*Thus amended by L. 1888, ch. 437.*]

Indentures, how cancelled; proceedings in case of violation on part of apprentice; punishment for leaving employer; on neglect of apprentice to perform his part of contract, indenture may be cancelled. § 4. Any and all indentures made under and in pursuance of the provisions of this act shall not be cancelled or annulled before the expiration of the term of said indentures, except in case of death; or, by the order of or judgment of the county or supreme court of this state for good cause, and any apprentice so indentured who shall leave his employer or employers without his or their consent or without sufficient cause, and shall refuse to return, may be arrested upon the complaint of said employer or employers, and taken before any magistrate having jurisdiction of misdemeanors, who may cancel said indentures, and on conviction commit said apprentice to the house of correction, house of refuge, or county jail, in and for said county, for such length of time as such magistrate may deem just, or until said apprentice shall have attained the age of twenty-one years, and in case said apprentice so indentured shall wilfully neglect or refuse to perform his portion of the contract as specified in said indenture, then said indenture may be cancelled in the manner aforesaid, and said apprentice so violating said indentures shall forfeit all back pay and all claims against said employer or employers, and said indentures shall be cancelled.

May bring action on failure of employer to provide for and teach apprentice; and if proven, indentures to be cancelled and fine imposed. § 5. Should any employer or employers neglect or refuse to teach, or cause to be taught to said apprentice the art or mystery of the trade or craft to which said apprentice has been indentured, or fail at any time to provide suitable and proper board, lodging and medical attendance, said apprentice individually, or his parent or parents, guardian or guardians, may bring an action against said employer or employers, to recover damages sustained by reason of said neglect or refusal; and, if proved to the satisfaction of the court, said court shall direct said indentures to be cancelled, and may impose a fine on said employer or employers, not exceeding one thousand and not less than one hundred dollars, and said fine shall be collected and paid over to said apprentice or his parent or guardian for his sole use and benefit.

Indentures conflicting with this act invalid. § 6. Any indentures made and executed, wherein parts conflict with or are not in accordance with the provisions of this act, shall be invalid and without any binding effect.

35 Hun, 32.

Repeal. § 7. All acts or parts of acts inconsistent herewith are hereby repealed.

[For provisions relating to binding out indigent children by charitable institutions, see part 1, ch. 20, tit. 21st.]

TITLE 4.

[156-158]

ARTICLE SECOND.

OF PERSONS HELD IN SERVICE.

[This entire article repealed by L. 1886, ch. 340.]

ARTICLE THIRD.

[156]

GENERAL PROVISIONS.

- Smo. 26. Indentures, etc., invalid, unless made as herein prescribed,
 27. County superintendents and overseers, to be guardians of servants.
 28-38. [Repealed.]
 39. Journeymen and apprentices not to be restrained in using their trade, etc.
 40. Penalties for violating last section.
 41-42. [Repealed.]
 43. This title to apply to mistresses, etc., as well as males.

Inden-
 tures,
 when in-
 valid.
 9 Barb.,
 313; 8
 Johns. R.,

§ 26. No indenture or contract for the service of any apprentice shall be valid as against the person whose services may be claimed, unless made in the manner before prescribed in this title.

328; 57 Barb., 294; 39 Hun, 77.

[1 R. L., 137, §§ 5, 6, 7, 10, 11 and 12.]

County su-
 perintend-
 ents and
 overseers
 to be guar-
 dians of
 servants.
 Their du-
 ties as
 such.

§ 27. The county superintendents of the poor, and the overseers of the poor of the respective cities or towns, shall be the guardians of every person bound or held in service, in their respective cities or towns, to take care that the terms of the contract of service be fulfilled, and that such person be properly used; and it is hereby made their special duty to inquire into the treatment of every such person, and redress any grievance in the manner prescribed by law.

[159]

[160]

[The same.]

[Sections 28 to 38 repealed by L. 1886, ch. 593.]

Journey-
 men and
 appren-
 tices not to
 be restrain-
 ed in using
 their trade,
 &c.
 20 J. & S.,
 95; 35 Hun,
 421.

§ 39. No person shall accept from any journeyman or apprentice, any contract or agreement, nor cause him to be bound by oath or otherwise, that after his term of service expired, such journeyman or apprentice shall not set up his trade, profession or employment, in any particular place, shop, house or cellar; nor shall any person exact from any journeyman or apprentice, after his term of service expired, any money or other thing, for using and exercising his trade, profession or employment, in any place.

[1 R. L., 135, § 1.]

Penalties.

[161]

§ 40. Every security given contrary to the provisions contained in the last section, shall be void; any money paid, or valuable thing delivered, for the consideration, in part or in whole, of any such agreement or exaction, may be recovered back by the person paying the same, with interest; and every person accepting such agreement, causing such obligation to be entered into, or exacting money or other thing as aforesaid, shall forfeit one hundred dollars, to the apprentice or journeyman from whom the same shall have been received.

[The same.]

[Sections 41 and 42 repealed by L. 1886, ch. 593.]

Applica-
 tion of this
 title to fe-
 males.

§ 43. The provisions of this title shall apply as well to mistresses, female guardians, apprentices and wards respectively, as to masters, male guardians, apprentices and wards.

[Supplementary Article.]

ARTICLE 3^A.

GENERAL REGULATIONS AFFECTING EMPLOYERS AND EMPLOYEES. THE FACTORY INSPECTOR,
AND HIS POWERS AND DUTIES.

L. 1850, Chap. 266—An act relative to the payment of wages to minors.

Notice of claim to be given, or payment to minor valid. SECTION 1. It shall be necessary for the parents or guardians of such minor children, as may be in service, to notify the party employing such minor, within thirty days after the commencement of such service, that said parent or guardian claim the wages of such minor, and in default of such notice payment to such minor shall be valid.

24 Barb., 635; 10 Barb., 480; 5 Wend., 204; 47 Barb., 589.

L. 1870, Chap. 385—An act to regulate the hours of labor of mechanics, workmen and laborers in the employ of the state, or otherwise engaged on public works.

Hours to constitute a day's work; overwork permitted. SECTION 1. On and after the passage of this act, eight hours shall constitute a legal day's work for all classes of mechanics, workmen and laborers, excepting those engaged in farm and domestic labor; but overwork for an extra compensation by agreement between employer and employee is hereby permitted.

14 W. D., 280; 96 N. Y., 1.

Act, to whom to apply. § 2. This act shall apply to all mechanics, workmen and laborers now or hereafter employed by the state, or any municipal corporation therein, through its agents or officers, or in the employ of persons contracting with the state or such corporation for performance of public works.

Violations, how punished. § 3. Any officer or officers, or agents of this state, or of such corporation, who shall openly violate or otherwise evade the provisions of this act, shall be deemed guilty of malfeasance in office, and be liable to suspension or removal accordingly by the governor or head of the department to which such officer is attached.

Evasion, how punished. § 4. Any party or parties contracting with the state, or any such corporation, who shall fail to comply with, or secretly evade the provisions hereof, by exacting and requiring more hours of labor, for the compensation agreed to be paid per day, than is herein fixed, shall, on conviction thereof be deemed guilty of a misdemeanor, and be punished by a fine, not less than one hundred nor exceeding five hundred dollars, and in addition thereto, shall forfeit such contract at the option of the state.

[Section 5 repeals L. 1867, ch. 856.]

L. 1885, Chap. 314—An act for the protection of life and limb.

Employers punished for negligently furnishing insecure scaffolding, etc. SECTION 1. A person employing or directing another to do or perform any labor in the erection, repairing, altering or painting of any house, building or other structure within this state, who shall knowingly or negligently furnish and erect, or cause to be furnished for erection, for and in the performance of said labor such unsuitable or improper scaffolding, hoists, stays, ladders, or other mechanical contrivances as will not give proper protection to the life and limb of any person so employed or engaged, shall be deemed guilty of a misdemeanor, and on conviction shall be fined not to exceed five hundred dollars, or imprisonment in a county

jail for not less than thirty days or more than six months, or by both such fine and imprisonment, in the discretion of the court.

Repeal. § 2. All acts or parts of acts inconsistent with this act are hereby repealed.

L. 1886, Chap. 151 — An act to regulate the hours of labor in the street surface and elevated railroads chartered by the state in cities of over five hundred thousand inhabitants.

Restriction of hours of labor. SECTION 1. Twelve hours' labor in twenty-four, with reasonable time for meals, shall constitute a day's labor in the operation of all street surface and elevated railroads owned or operated by corporations incorporated under the laws of this state, whose main line of travel, or whose routes lie principally within the corporate limits of cities of more than five hundred thousand inhabitants, whatever motive power may be used in the operation of such railroads.

Penalty ; when extra labor allowed. § 2. It shall be a misdemeanor for any officer or agent of any such corporation to exact from any of its employees more than twelve consecutive hours' labor in the twenty-four, with one-half hour for dinner, constituting a day ; provided, however, that in cases of accident or unavoidable delay, extra labor may be permitted for extra compensation.

Application of act. § 3. This act shall not affect contracts now in force, nor apply to existing corporations whose charters are not subject to alteration, modification or repeal.

L. 1886, Chap. 409 — An act to regulate the employment of women and children in manufacturing establishments, and to provide for the appointment of inspectors to enforce the same.

Minors ; hours of labor. SECTION 1. No minor under the age of eighteen years nor any woman under twenty-one years shall be employed at labor in any manufacturing establishment in this state for a longer period than sixty hours in any one week, unless for the purpose of making necessary repairs.

Regulations for the employment of children. § 2. No child under thirteen years of age shall be employed in any manufacturing establishment within this state. It shall be the duty of every person so employing children, to keep a register in which shall be recorded the name, birthplace, age and place of residence of every person so employed by him under the age of sixteen years. And it shall be unlawful for any manufacturing establishment to hire or employ any child under the age of sixteen years without there is first provided and placed on file an affidavit made by the parent or guardian, stating the age, date and place of birth of said child ; if said child have no parent or guardian, then such affidavit shall be made by the child, which affidavit shall be kept on file by the employer, and which said register and affidavit shall be produced for inspection on demand made by the inspector, assistant inspector, or any of the deputies appointed under this act. [*Thus amended by L. 1887, ch. 462.*]

Hours of labor to be posted ; list of names of children. § 3. Every person, firm or corporation employing women under twenty-one years, or minors under eighteen years of age, in any manufacturing establishment, shall post and keep posted in a conspicuous place in every room where such help is employed, a printed notice stating the number of hours per day for each day of the week required of such persons, and in every room where children under sixteen years of age are employed, a list of their names with their age.

Violations of act, how punished. § 4. Any person who knowingly violates or omits to comply with any of the foregoing provisions of this act, or who knowingly employs or suffers or permits any child to be employed in violation of its provisions

shall, on conviction, be punished by a fine of not less than fifty nor more than one hundred dollars, and in default of payment of such fine, by imprisonment for not less than thirty nor more than ninety days.

Manufacturing establishment defined. § 5. No person or corporation employing less than five persons or children, excepting in any of the cities of this state, shall be deemed a manufacturing establishment within the meaning of this act.

Governor to appoint factory inspector and assistant; their duties and powers. § 6. The governor shall, immediately after the passage of this act, appoint, with the advice and consent of the senate, a factory inspector at a salary of two thousand dollars per year, and one assistant at a salary of fifteen hundred dollars per year, whose terms of office shall be three years. The said inspector and assistant shall be empowered to visit and inspect at all reasonable hours, and as often as practicable, the factories, workshops and other establishments in the state where the manufacture of goods is carried on, and to report to the bureau of labor statistics of this state on or before the thirtieth day of November of each year. It shall also be the duties of said inspector to enforce the provisions of this act, and to prosecute all violations of the same before any magistrate or any court of competent jurisdiction in the state.

Expenses of inspectors, how paid. § 7. All necessary expenses incurred by said inspectors in the discharge of their duty shall be paid from the funds of the state, upon the presentation of proper vouchers for the same, provided that not more than twenty-five hundred dollars shall be expended by them therefor in any one year.

Hoisting shafts and elevators to be protected. § 8. It shall be the duty of the owner, agent or lessee of any manufacturing establishment where hoisting shafts or well holes are used, to cause the same to be properly and substantially enclosed or secured, if in the opinion of the inspector it is necessary to protect the life or limbs of those employed in such establishments. It shall also be the duty of the owner, agent or lessee to provide or cause to be provided such proper trap or automatic doors, so fastened in or at all elevator ways as to form a substantial surface when closed, and so constructed as to open and close by action of the elevator in its passage, either ascending or descending. [*Thus amended by L. 1887, ch. 462.*]

Handrails; stairs; doors to open outwards. § 9. Proper and substantial hand rails shall be provided on all stairways in manufacturing establishments, and where, in the opinion of the inspector, it is necessary the steps of said stairs in all such establishments shall be substantially covered with rubber, securely fastened thereon, for the better safety of persons employed in said establishments. The stairs shall be properly screened at the sides and bottom, and all doors leading in or to such factory shall be so constructed as to open outwardly where practicable, and shall be neither locked, bolted nor fastened during working hours. [*Thus amended by L. 1887, ch. 462.*]

Fire escapes; stationary ladders. § 10. Fire escapes shall be provided on the outside of all factories, three or more stories in height, connecting with each floor above the first, well fastened and secured and of sufficient strength. Stationary stairs or ladders shall be provided on the inside, from the upper story to the roof, as a means of escape in case of fire. [*Added by L. 1887, ch. 462.*]

Belt shifters; gearing; cleaning machinery. § 11. It shall also be the duty of the owner of such factory or his agent, superintendent or other person in charge of the same, to furnish and supply, or cause to be furnished and supplied, in the discretion of the inspector, where machinery is in use, automatic shifters or other mechanical contrivances, for the purpose of throwing on or off, belts or pulleys; and no female under the age of twenty-one years, and no male under eighteen years of age shall be allowed to clean machinery while in motion. All gearing and belting shall be provided with proper safeguard. [*Added by L. 1887, ch. 462.*]

Accidents to be reported. § 12. It shall be the duty of the agent, superintendent or other person having charge of a factory or workshop, or of any floor or part thereof, to report in writing to the factory inspector, all accidents or injury done to any person employed in such factory, within forty-eight hours of the time of the accident, stating as fully as possible, the extent and cause of such injury, and the place where the injured person has been sent. [*Added by L. 1887, ch. 462.*]

Wash room and water closets. § 13. A suitable and proper wash room and water closets shall be provided for females where employed, and the water closets used by females shall be separate and apart from those used by males and shall be properly screened and ventilated, and at all times kept in a clean condition. [*Added by L. 1887, ch. 462.*]

Time to be allowed for meal; permit for shorter time. § 14. Not less than forty-five minutes shall be allowed for the noon-day meal, in any manufacturing establishment in this state. The factory inspector, his assistant or any of his deputies, shall have power to issue written permits in special cases, allowing a shorter meal time at noon, and such permit must be conspicuously posted in the main entrance of the establishment, and such permit may be revoked at any time the inspector deems necessary, and shall only be given where good cause can be shown. [*Added by L. 1887, ch. 462.*]

Deputy factory inspectors; clerk; powers and duties. § 15. The factory inspector, now or hereafter appointed under and by virtue of the provisions of chapter four hundred and nine of the laws of eighteen hundred and eighty-six, is hereby authorized to appoint such number of persons as in his judgment may be necessary, not exceeding eight, who shall be known as deputy factory inspectors, either or any one of whom may be appointed to act as clerk in the main office, and whose duties it shall be to enforce the provisions of this act, and of chapter four hundred and nine of the laws of eighteen hundred and eighty-six. The powers of said deputies shall be the same as the powers of the factory inspectors, subject to the supervision and direction of the factory inspector. [*Added by L. 1887, ch. 462.*]

District-attorney to prosecute for violation of this act. § 16. The district-attorney of any county of this state is hereby authorized upon the request of the factory inspector, or either of his deputies, or of any other person of full age, to commence and prosecute to termination before any recorder, police justice, or court of record, in the name of the people of the state, actions or proceedings against any person or persons reported to him to have violated the provisions of this act. [*Added by L. 1887, ch. 462.*]

Salaries and expenses of deputies. § 17. The travelling expenses of each of said deputies shall be approved by the inspector, and audited by the comptroller of the state before payment, and said deputy inspector shall have an annual salary of ten hundred dollars, to be paid monthly by the treasurer of the state, out of any moneys not otherwise appropriated. [*Added by L. 1887, ch. 462.*]

State to be divided into districts; removal of deputies. § 18. Said factory inspector shall have power to divide the state into districts and to assign one of said deputies to each district, and may transfer any of the deputies to other districts in case the best interests of the state require it. The inspector shall have the power of removing any of the deputy inspectors at any time. [*Added by L. 1887, ch. 462.*]

Salaries of inspector and assistant; annual report; may administer oaths. § 19. The factory inspector shall receive an annual salary of two thousand dollars, and the assistant factory inspector shall receive an annual salary of fifteen hundred dollars and they shall make a report to the legislature on or before the tenth day of January of each year; and an office shall be furnished by the capitol commissioner, in the new capitol, as soon as practicable, which shall be set apart for the use of the factory inspector. The factory inspector, his assistant and deputies, shall have the same power to administer oaths, as is now given to notaries public,

in cases where persons desire to verify documents connected with the proper enforcement of this act. [*Added by L. 1887, ch. 462.*]

Punishment for violating this act. § 20. Any person who violates or omits to comply with any of the foregoing provisions of this act shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty nor more than one hundred dollars, or by imprisonment for not less than thirty nor more than ninety days, or by both such fine and imprisonment. [*Added by L. 1887, ch. 462.*]

Copy of this act to be posted. § 21. A copy of this act shall be posted in each work-room of every manufacturing or mercantile house in this state, where persons are employed who are affected by the provisions of this act. [*Added by L. 1887, ch. 462.*]

Repeal. § 22. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. [*Added by L. 1887, ch. 462.*]

L. 1887, Chap. 529 — An act to regulate the hours of labor in the street surface and elevated railroads chartered by the state, in cities of one hundred thousand inhabitants and over.

What time to constitute a day's labor. SECTION 1. Ten hours' labor to be performed within twelve consecutive hours, with reasonable time for meals, shall constitute a day's labor in the operation of all street surface and elevated railroads owned or operated by corporations incorporated under the laws of this state, whose main line of travel, or whose routes lie principally within the corporate limits of cities of more than one hundred thousand inhabitants, whatever motive power may be used in the operation of such railroads.

Penalty for exacting more; proviso. § 2. It shall be a misdemeanor for any officer or agent of any such corporation to exact from any of its employees more than ten hours labor, the same to be performed within twelve consecutive hours, with not less than one-half hour for dinner, constituting a day; provided, however, that in cases of accident or unavoidable delay, extra labor may be permitted for extra compensation.

Operation of act limited. § 3. This act shall not affect contracts now in force, nor apply to existing corporations whose charters are not subject to alteration, modification or appeal.

Repeal. § 4. All acts inconsistent with this act are hereby repealed.

L. 1887, Chap. 532 — An act for the moral protection of messenger boys.

Where boys employed, communication between office and saloon, etc., prohibited. SECTION 1. It shall be unlawful for any corporation or person employing messenger boys knowingly to place or permit to remain in any disorderly house, or in any unlicensed saloon, inn, tavern or other unlicensed place, where malt or spirituous liquors or wines are sold, any instrument or device by which communication may be had between said disorderly house, saloon, inn, tavern, or other unlicensed place, and any office, or place of business of such corporation or person employing messenger boys.

Boys not to be sent to certain places; exception as to telegrams. § 2. It shall be unlawful for any corporation or person employing messenger boys, to knowingly send or permit any person to send any messenger boy to any disorderly house, unlicensed saloon, inn, tavern, or other unlicensed place, where malt or spirituous liquors or wines are sold on any errand or business whatever. This shall not apply to telegrams delivered at the door of any house.

Punishment for violation. § 3. Any person who violates the provisions of this act shall be deemed guilty of a misdemeanor.

Id., penalty. § 4. Any person or corporation violating any of the provisions of this act shall also incur a penalty of fifty dollars, which may be recovered in an action to be brought in the name of the people by the district-attorney of the county in which such violation occurs.

[Supplementary Article.]

ARTICLE 3^B.

PROVISIONS RELATING TO DISPUTES BETWEEN EMPLOYERS AND EMPLOYEES. THE STATE BOARD OF MEDIATION AND ARBITRATION; AND ITS POWERS AND DUTIES

L. 1886, Chap. 410—An act to provide for the amicable adjustment of grievances and disputes that may arise between employers and employees, and to authorize the creation of a state board of arbitration.

[Superseded by L. 1887, ch. 63, which immediately follows.]

L. 1887, Chap. 63—An act to provide for the amicable adjustment of grievances and disputes that may arise between employers and employees, and to authorize the creation of a state board of mediation and arbitration.

Submission of disputes to local boards of arbitration; how arbitrators designated.
SECTION 1. Whenever any grievance or dispute of any nature shall arise between any employer and his employees, it shall be lawful to submit the same, in writing, to a board of arbitrators for hearing and settlement. Said board shall consist of three persons. When the employees concerned are members in good standing of any labor organization, which is represented by one or more delegates in a central body, the said body shall have power to designate one of said arbitrators, and the employer shall have power to designate one other of said arbitrators, and the said two arbitrators shall designate a third person, as arbitrator, who shall be chairman of the board. In case the employees concerned in any grievance or dispute are members in good standing of a labor organization which is not represented in a central body, then the organization of which they are members shall have the power to select and designate one arbitrator for said board, and said board shall be organized as hereinbefore provided. And in case the employees concerned in any grievance or dispute are not members of any labor organization, then a majority of said employees, at a meeting duly held for that purpose, shall designate one arbitrator for said board, and the said board shall be organized as hereinbefore provided. In all cases of arbitration the grievance or matter of dispute shall be succinctly and clearly stated in writing, signed by the parties to the arbitration or some duly authorized person on their behalf, and submitted to such board of arbitration.

Arbitrators' consent and oath; notice of hearing; powers of board. § 2. Each arbitrator so selected shall sign a consent to act as such, and shall take and subscribe an oath before an officer authorized to administer oaths, to faithfully and impartially discharge his duties as such arbitrator, which consent and oath may be filed in the office of the clerk of the county where such dispute arises. When the said board is ready for the transaction of business it shall select one of its number to act as secretary, and the parties to the dispute shall receive notice of a time and place of hearing. The chairman shall have power to administer oaths and to issue subpoenas for the production of books and papers, and for the attendance of witnesses, to the same extent that such power is possessed by the courts of record or the judges thereof in this state. The board may make and enforce the rules for its government and the transaction of the business before it, and fix its sessions and adjournment, and shall hear and examine such witnesses as may be brought before the board, and such other proof as may be given relative to the matter in dispute.

Arbitrators' decision. § 3. After the matter has been fully heard, the said board, or a majority of its members shall within ten days, render a decision thereon, in

writing, signed by them, giving such details as will clearly show the nature of the decision and the points disposed of. Such decision shall be a settlement of the matter referred to said arbitrators unless an appeal is taken therefrom as is hereinafter provided. The decision shall be in duplicate, one copy of which shall be filed in the office of the clerk of the county, and the other transmitted to the secretary of the state board of mediation and arbitration, hereinafter mentioned, together with the testimony taken before said board.

When board may act in other cases. § 4. When the said board shall have rendered its decision its power shall cease, unless there may be in existence at the time other similar grievances or disputes between the same classes of persons, and in such case such persons may submit their differences to the said board, which shall have power to act, and arbitrate and decide upon the same as fully as if said board was originally created for the settlement of such other difference or differences.

State board of mediation and arbitration; selection of members; terms of office; vacancies; oaths; secretary. § 5. Within three days after the passage of this act the governor shall, with the advice and consent of the senate, appoint a state board of mediation and arbitration, to consist of three competent persons, each of whom shall hold his office for the term of three years, to commence immediately upon the expiration of the term of office of the members of the present state board of arbitration, created under chapter four hundred and ten of the laws of one thousand eight hundred and eighty-six. One of said persons shall be selected from the party which at the last general election cast the greatest number of votes for governor of this state, and one of said persons shall be selected from the party which at the last general election cast the next greatest number of votes for governor of this state, and the other of said persons shall be selected from a *bona fide* labor organization of this state. If any vacancy happens by resignation or otherwise, he shall in the same manner appoint an arbitrator for the residue of the term. If the senate shall not be in session at the time any vacancy shall occur or exist, the governor shall appoint an arbitrator to fill the vacancy, subject to the approval of the senate when convened. Said board shall have a clerk or secretary who shall be appointed by the board to serve three years, whose duty it shall be to keep a full and faithful record of the proceedings of the board, and also all documents and testimony forwarded by the local boards of arbitration, and perform such other duties as the said board may prescribe. He shall have power under the direction of the board, to issue subpoenas, to administer oaths in all cases before said board, to call for and examine books, papers and documents of any parties to the controversy, with the same authority to enforce their production as is possessed by the courts of record or the judges thereof, in this state. Said arbitrators and clerk shall take and subscribe the constitutional oath of office, and be sworn to the due and faithful performance of the duties of their respective offices before entering upon the discharge of the same. An office shall be set apart in the capitol by the person or persons having charge thereof, for the proper and convenient transaction of the business of said board.

Appeals from local boards to state board; quorum; hearing; decision final. § 6. An appeal may be taken from the decision of any local board of arbitration within ten days after the rendition and filing of such decision. It shall be the duty of said state board of mediation and arbitration, to hear and consider appeals from the decisions of local boards, and promptly to proceed to the investigation of such cases, and the decision of said board thereon shall be final and conclusive in the premises upon both parties to the arbitration. Such decision shall be in writing, and a copy thereof shall be furnished to each party. Any two of the arbitrators shall constitute a quorum for the transaction of business, and may hold meetings at any time or place within the state. Examinations or investigations ordered by the board may be held and taken by and before any one of their number, if so directed. But the proceedings and decision of any single arbitrator shall not be deemed conclusive until approved by the board or a majority thereof. Each arbitrator shall have power to administer oaths.

Submission of dispute directly to state board; how made; proceedings thereupon.

§ 7. Whenever any grievance or dispute of any nature shall arise between any employer and his employees, it shall be lawful for the parties to submit the same, directly to said state board in the first instance, in case such parties elect to do so, and shall jointly notify said board or its clerk, in writing, of such election. Whenever such notification to said board or its clerk is given, it shall be the duty of said board to proceed, with as little delay as possible, to the locality of such grievance or dispute, and inquire into the cause or causes of grievance or dispute. The parties to the grievance or dispute shall thereupon submit to said board, in writing, succinctly, clearly and in detail, their grievances and complaints, and the cause or causes thereof, and severally agree in writing, to submit to the decision of said board as to matters so submitted, and a promise or agreement to continue on in business or at work, without a lock-out or strike until the decision of said board, provided it shall be rendered within ten days after the completion of the investigation. The board shall thereupon proceed to fully investigate and inquire into the matters in controversy, and to take testimony under oath in relation thereto, and shall have power by its chairman or clerk, to administer oaths, to issue subpoenas for the attendance of witnesses, the production of books and papers, to the same extent as such power is possessed by courts of record or the judges thereof, in this state.

Decision; filing and service. § 8. After the matter has been fully heard, the said board, or a majority of its members, shall within ten days, render a decision thereon in writing, signed by them or a majority of them, stating such details as will clearly show the nature of the decision and the points disposed of by them. The decision shall be in triplicate, one copy of which shall be filed by the clerk of the board in the clerk's office of the county where the controversy arose, and one copy shall be served on each of the parties to the controversy.

Mediation of state board in case of strikes, etc. § 9. Whenever a strike or lock-out shall occur, or is seriously threatened in any part of the state, and shall come to the knowledge of the board, it shall be its duty, and it is hereby directed to proceed, as soon as practicable, to the locality of such strike or lock-out and put themselves in communication with the parties to the controversy, and endeavor by mediation to effect an amicable settlement of such controversy; and if in their judgment it is deemed best, to inquire into the cause or causes of the controversy, and to that end the board is hereby authorized to subpoena witnesses, compel their attendance, and send for persons and papers, in like manner and with the same powers as it is authorized to do by section seven of this act.

Witnesses' fees; subpoenas and service. § 10. The fees of witnesses shall be fifty cents for each day's attendance, and four cents per mile travelled by the nearest route in getting to or returning from the place where attendance is required by the board. All subpoenas shall be signed by the secretary of the board, and may be served by any person of full age authorized by the board to serve the same.

Annual report of state board. § 11. Said board shall make a yearly report to the legislature and shall include therein such statements, facts and explanations, as will disclose the actual working of the board, and such suggestions as to legislation, as may seem to them conducive to harmonizing the relations of, and disputes between employers and the wage-earning masses, and the improvement of the present system of production.

Salaries. § 12. Each arbitrator shall be entitled to an annual salary of three thousand dollars, payable in quarterly instalments from the treasury of the state. The clerk or secretary shall receive an annual salary of two thousand dollars, payable in like manner.

Meaning of "employer." § 13. Whenever the term "employer" or "employers" is used in this act it shall be held to include "firm," "joint-stock association," "company," or "corporation," as fully as if each of the last named terms was expressed in each place.

REVISED STATUTES
OF THE
STATE OF NEW YORK. [163]

PART III.

AN ACT concerning courts and ministers of justice, and
proceedings in civil cases.

WHEREAS it is expedient that the several statutes of this state, relating to courts and ministers of justice, and to proceedings in civil cases, should be consolidated and arranged in appropriate chapters, titles and articles; that the language thereof should be simplified; and that omissions and other defects should be supplied: Therefore,

The People of the State of New York, represented in Senate and Assembly, do declare and enact as follows:

CHAPTER I.

OF THE COURTS OF GENERAL OR LIMITED JURIS-
DICTION.

TITLE I.—OF THE COURT FOR THE TRIAL OF IMPEACHMENTS AND THE
CORRECTION OF ERRORS.
[Repealed.]

TITLE II.—OF THE COURT OF CHANCERY.
[Repealed.]

TITLE III.—OF THE SUPREME COURT.
[Repealed.]

TITLE IV.—OF THE CIRCUIT COURTS, SITTINGS, AND COURTS OF OYER
AND TERMINER.

TITLE V.—OF THE COURTS OF COMMON PLEAS AND GENERAL SESSIONS
OF THE PEACE, IN THE SEVERAL COUNTIES OF THIS STATE.

[Supplementary Title.

TITLE 5^A.—Of the superior city courts.]

TITLE VI.—OF MAYORS' COURTS IN CITIES.
[Repealed.]

TITLE 3.

[164-166]

TITLE I.

Of the Court for the Trial of Impeachments and the Correction of Errors.

ART. 1.—Of the constitution of the court, and its officers.

ART. 2.—Of impeachments, and the mode of conducting them.

ART. 3.—Of its powers as a court for the correction of errors.

[This entire title repealed by L. 1886, ch. 593.]

[167-196]

TITLE II.

Of the Court of Chancery.

ART. 1.—Of the constitution of the court, and of its officers and their duties.

ART. 2.—Of the general powers, duties, and jurisdiction of the court.

ART. 3.—Of the terms of the court, and the mode of proceeding therein.

ART. 4.—Of proceedings against absent, concealed, and non-resident defendants.

ART. 5.—Of the granting of injunctions to stay proceedings at law.

ART. 6.—Of the powers and proceedings of the court, upon bills for the foreclosure or satisfaction of mortgages.

ART. 7.—Of proceedings in relation to the conveyance of lands by infants, and the sale and disposition of their estates.

[This entire title repealed by L. 1877, ch. 417, and L. 1880, ch. 245.]

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TITLE III.

Of the Supreme Court.

[This entire title was repealed by L. 1877, ch. 417.]

L. 1881, Chap. 10—An act to provide for detailing judges of the city court of Brooklyn to hold circuits and special terms of the supreme court in Kings county.

Governor may designate judges of city court to hold circuits, etc. **SECTION 1.** Pursuant to the twelfth section of the sixth article of the Constitution of this state, the governor may, from time to time, whenever the public interests shall require, designate judges of the city court of Brooklyn to hold circuits and special terms of the supreme court in the county of Kings; such designation shall be in writing and shall specify the time and place of holding any such circuit or special term. When a case or bill of exceptions shall be made in any cause, tried at such circuit or special term, the same shall be settled before the judge holding the same, and the review shall be had at a special or general term of the supreme court, in the same manner and with the same effect as if such circuit or special term had been held by a justice of the supreme court.

L. 1881, Chap. 369—An act to provide for the performance of services in the supreme court and the court of appeals, by stenographers.

Stenographers to report proceedings before any judge of court of appeals, etc. **SECTION 1.** The stenographers appointed or employed in the supreme court shall perform all such services as may be required from them, or either of them, in reporting,

writing out and copying all judicial proceedings which may be pending, or in progress, before any judge of the court of appeals, or justice of the supreme court, in which such services shall be required. And for the performance thereof, such reporter shall be entitled to receive the same compensation as is now provided for similar services in court, and which shall be certified and paid in the same manner.

If stenographer is otherwise employed, person may be designated. § 2. When the official stenographer, whose duty according to the preceding section it would be to perform such service or services, is otherwise officially employed, any other competent person may be designated and selected to perform the same in his place, and shall receive compensation therefor as provided in the preceding section. [Thus amended by L. 1884, ch. 333.]

TITLE IV.

TITLE 4.
[301-306]

Of the Circuit Courts, Sitzings, and Courts of Oyer and Terminer.

SMO. 1-36. [Repealed or superseded.]

37. Precept, when to be issued by district-attorney.

38. Contents of precept.

39. Sheriff to publish proclamation; expense thereof.

40. Seals of courts of oyer and terminer.

41-45. [Repealed.]

[Sections 1-27 were repealed by L. 1877, ch. 417.]

[Sections 28-31 were repealed by L. 1886, ch. 593.]

[Sections 32-36 were superseded by Code Civil Proc. and Code Crim. Proc.]

§ 37. The district-attorney of every county, at least twenty days before the time appointed for the holding of such or any other court of oyer and terminer and jail delivery, in his county, shall issue a precept to be tested and sealed, in the same manner as process issued out of the courts of oyer and terminer and jail delivery, and to be directed to the sheriff of his county.

Precept by district-attorney.
3 Park. Cr., 148; id., 235; 3 Park. Cr., 243; 38 Barb., 25.

[1 R. L., 339, § 16.]

§ 38. Every such precept shall mention the time and place at which such court is to be held, and shall command the said sheriff,

Contents of precept.
3 Park. Cr., 148.

1. To summon the several persons who shall have been drawn in his county, pursuant to law, to serve as grand and petit jurors at the said court, to appear thereat:

2. To bring before the said court, all prisoners then being in the jail of such county, together with all process and proceedings any way concerning them in the hands of such sheriff:

3. To make proclamation in the manner prescribed by law, notifying all persons bound to appear at the said court, by recognizance, or otherwise, to appear thereat; and requiring all justices of the peace, coroners, and other officers who have taken any recognizance for the appearance of any person at such court, or who have taken any inquisition, or the examination of any prisoner or witness, to return such recognizances, inquisitions and examinations, to the said court, at the opening thereof, on the first day of its sitting.

[The same.]

TITLE 5.

Proclamation to be published.

§ 39. The sheriff to whom any such precept shall be directed and delivered, immediately on the receipt thereof, shall cause a proclamation in conformity thereto, signed by him, to be published once in each week, until the sitting of the court, in one or more of the newspapers printed in the said county. The expense of such publication shall be a county charge.

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Seals of courts of oyer and terminer.
20 N. Y., 546.

§ 40. The seals heretofore devised or adopted by the several courts of oyer and terminer and jail delivery, shall continue to be the seals of the said courts respectively; and where none have been devised, the court shall have power to make and devise such seal.

[Sections 41-44 were repealed by L. 1886, ch. 539.]

[Section 45 was repealed by L. 1877, § 417.]

TITLE V.

Of the Courts of Common Pleas and General Sessions of the Peace, in the several Counties of this State.

Sec. 1-20. [Repealed.]

[308-315]

21. In cases not otherwise directed, courts to be held at court-houses.

22 & 23. [Repealed.]

24. Clerk of county to be clerk of common pleas, and to give bond.

25. When and how bond to be cancelled.

26-34. [Repealed.]

[All of this title, except the three sections which follow, was repealed by L. 1887, ch. 417; L. 1880, ch. 245; and L. 1886, ch. 593.]

To be held at court-houses.

§ 21. In all cases not specially provided for in the preceding section, the courts of common pleas and general sessions, shall be held at the court-houses in the several counties.

Clerk of N. Y. Co., to give bond.

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§ 24. The clerk of the city and county of New York, shall, by virtue of his office, be clerk of the court of common pleas for the said city and county; and every person hereafter elected to that office, shall, before he enters on the duties thereof, execute a bond to the people of this state, in the penalty of fifteen thousand dollars, with two sufficient sureties, to be approved by the said first judge, conditioned that such clerk shall well and faithfully, in all things, apply, appropriate and pay over all such sums of money as he may from time to time receive, in virtue of his said office, during his continuance therein; and that if default be made therein, he and his sureties will jointly and severally answer and pay to the parties who may be injured by such default, all damages they may sustain; which bond, when so executed and approved, shall be filed in the office of the clerk of the supreme court in the city of New York.

[L. 1826, 265, §§ 1 and 2; partly repealed by L. 1843, ch. 88.]

[This section is probably superseded, in part, by L. 1884, ch. 299, § 6, in ch. 10, *post.*]

Its condition.

When and how bond to be cancelled.

§ 25. Whenever any such clerk shall go out of office, and shall pay over to his successor all the monies then remaining in his hands, accompanied by such vouchers and statements in relation thereto, as shall be satisfactory to such successor, to be signified by his certificate

under seal, it shall be the duty of the said first judge, to grant an order requiring the clerk of the supreme court, upon the filing of such certificate in his office, to give up the bond executed by the clerk so going out of office, and his sureties, to the parties who executed the same, to be cancelled. And it shall be the duty of the clerk of the supreme court to obey such order.

TITLE 5.

[Supplementary Title.]

TITLE 5^A.

Of the Superior City Courts.

ART. 1.—The court of common pleas for the city and county of New York, and the superior court of the city of New York.

ART. 2.—The superior court of Buffalo.

ART. 3.—The city court of Brooklyn.

ARTICLE FIRST.

THE COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF NEW YORK, AND THE SUPERIOR COURT OF THE CITY OF NEW YORK.

[See Code of Civil Procedure, *passim*.]

L. 1828, Chap. 137 — An act for the establishment of a superior court of law in the city of New York.

Superior court of New York established. SECTION 1. There shall be and hereby is established, within the city and county of New York, a court to be called and known by the name of "The superior court of the city of New York;" which court shall consist of a chief justice, and two associate justices.

When and where held. § 3. The said court shall be held at the city hall of the city of New York. * * * * *

Seal. § 8. The said court shall have a seal, to be devised by the justices thereof, a description of which shall be deposited in the office of the secretary of state, signed by the said justices, or a majority of them; and such seal shall then be used as the seal of the said court.

Clerk. § 9. The said justices shall appoint a clerk, who shall keep his office at the city hall of the city of New York, and attend the said court and officiate as clerk thereof.

[See Code of Civ. Proc., § 284.]

[The remainder of the foregoing act was superseded by the amendments to the Constitution, and by subsequent legislation, and was finally repealed by L. 1881, ch. 537.]

L. 1849, Chap. 124 — An act for increasing the number of justices in the superior court of the city of New York, and for extending the jurisdiction of that court.

[This entire act, except § 13, was repealed by L. 1877, ch. 417, and L. 1881, ch. 537.]

Clerk's fees. § 13. The clerk of said court shall receive for every trial from the party which shall bring it on, one dollar: on entering judgment, one dollar. He shall receive no other fee for any service whatever, in a civil action, except for copies of papers at the rate of five cents for every one hundred words.

[See Code of Civil Procedure, § 3301.]

L. 1854, Chap. 198—An act in relation to the court of common pleas for the city and county of New York.

[This act, except the following sections, was repealed by L. 1877, ch. 417.]

Clerk's office. § 2. The common council of the city of New York must, by ordinance, assign the clerk so appointed a suitable office in the city hall in that city.

Fees. § 3. The said clerk shall pay over to the city treasurer, in monthly payments, all the fees, perquisites and emoluments of his office, and shall receive such compensation for his services, and for the services of his assistants, as shall be fixed by the board of supervisors of the city and county of New York, in conformity to the act in relation to the fees and compensation of certain officers in the city and county of New York, passed December 10th, 1847.

Salaries. § 4. When the fees received and paid over by the officers named in said act, and the said clerk, shall be insufficient to pay the necessary expenses and salaries of their respective offices, the deficiency shall be paid out of the appropriation for county contingencies.

ARTICLE SECOND.

THE SUPERIOR COURT OF BUFFALO.

[Originally organized as the "recorder's court in the city of Buffalo," by L. 1839, ch. 210. The name of the court changed to the superior court of Buffalo, L. 1854, ch. 96. Most of the statutes relating to this court have been superseded by provisions of the Code of Civil Procedure and the Code of Criminal Procedure, *q. v., passim.*]

L. 1854, Chap. 96—An act to amend an act entitled "An act to organize and establish a recorder's court in the city of Buffalo, and for other purposes," passed April 20, 1839.

[Sections 1-5 were repealed by L. 1877, ch. 417.]

Clerk and crier. § 6. A clerk and crier shall be appointed by, and hold their offices during the pleasure of, said court. The clerk shall receive the same fees allowed by law to county clerks for similar services performed in the supreme court and courts of oyer and terminer, and a salary of twenty-five hundred dollars a year, to be paid by the county of Erie. The crier shall be paid by the city of Buffalo the compensation now allowed by law. [*Thus amended by L. 1883, ch. 219.*]

[See Code of Civil Procedure, § 284.]

[Sections 7-29 were repealed by L. 1877, ch. 417, and L. 1880, ch. 245.]

Rooms of court. § 30. It shall be the duty of the supervisors of Erie county to provide and furnish suitable places for holding the terms of said court and the transaction of its business, and for the office of the clerk, and in case the said supervisors neglect or refuse to provide such rooms or furniture for the same, the said court is hereby authorized to direct, by an order, such person or persons as shall be named in such order to provide such rooms and furniture, which shall be provided by such person or persons at the expense of the said county.

[Sections 31 to 35 repealed by L. 1886, ch. 593.]

Grand jurors. § 36.* From the list of jurors returned under the twenty-eighth

* Sections 28 and 29, although repealed in 1877, as above noted, are here given in order to render intelligible the reference to them in this section. They were superseded by Code Civ. Proc., §§ 308-309.

§ 28. The assessors of the said city shall, in the month of May next, and in the month of May in each second year thereafter, make out, return and file with the clerk of said court, a list of not less than six hundred residents of said city, not exempt from jury duty, qualified to serve as petit jurors in said court. The said court may from time to time order the said assessors to make out a new or further list of jurors, and enforce such order by proceedings for contempt. [*Thus amended by L. 1837, ch. 381.*]

§ 29. From the list so returned by the assessors, the clerk of said court, in the presence of one of the justices thereof, shall, at least fourteen days before the time appointed for the holding of a term of said court for the trial of issues of fact by a jury or for the trial of indictments, without any previous notice thereof, draw thirty-six persons, or such other number as the court may order, to serve as petit jurors; such drawing shall be conducted in the manner prescribed by law in relation to the drawing of petit jurors by county clerks; and the sheriff of Erie county shall summon the persons so drawn, in the manner prescribed by law for summoning juries in the supreme court. The jurors attending said court shall be paid by the county of Erie the

section of this act, the clerk of said court shall, in the manner prescribed in the twenty-ninth section of this act, draw twenty-four persons to serve as grand jurors at the terms appointed for the transaction of criminal business. The persons so drawn shall be summoned in the manner prescribed in said section twenty-nine, and shall receive the same compensation from the county of Erie as grand jurors attending the oyer and terminer.

Existing provisions. § 37. All the provisions of law now in force relating to the recorder's court of Buffalo, and not inconsistent with the provisions of this act, shall apply to the said court, as reorganized by this act.

[Section 38 prescribes when the act shall take effect.]

Transfer of actions. § 39. If any action or proceeding is pending in said court before the general term, and two of the justices of said court, from any cause, shall be disqualified to hear or decide the same, the court shall by order transfer the same to the supreme court, which last court shall, upon a certified copy of said order being filed with its clerk, become fully possessed of such action or proceeding.

[*Added by L. 1857, ch. 361.*]

[See Code Civ. Proc., § 273.]

L. 1874, Chap. 57—An act to empower the judges of the superior court of Buffalo to employ a stenographer.

[Sections 1 and 2 were repealed by L. 1877, ch 417.]

Salary of stenographer and assistant. § 3. The said stenographic reporter shall receive a salary of two thousand dollars per annum, and the assistant stenographic reporter shall receive a salary of one thousand dollars per annum, to be paid from the treasury of said city of Buffalo, quarterly, on the certificate of a judge of said superior court, showing that the services have been actually performed. [*Thus amended by L. 1886, ch. 343.*]

L. 1883, Chap. 219—An act to amend chapter ninety-six of the laws of eighteen hundred and fifty-four, entitled "An act to amend an act entitled 'An act to organize and establish a recorder's court in the city of Buffalo, and for other purposes,'" passed April twentieth, eighteen hundred and thirty-nine. Also to amend chapter two hundred and thirty-two of the laws of eighteen hundred and seventy-four, entitled "An act in relation to the superior court of Buffalo."

[Section 1 amended by L. 1854, ch. 96, § 6.]

§ 2. Section one of chapter two hundred and thirty-two of the laws of eighteen hundred and seventy-four, entitled "An act in relation to the superior court of Buffalo," passed April twenty-first, eighteen hundred and seventy-four, is amended so as to read as follows:

Deputy clerk; appointment; salary. § 1. The clerk of the superior court of Buffalo shall appoint some proper person as deputy clerk of said court, who shall hold his office during the pleasure of the clerk of said court; and as often as such deputy clerk shall die, resign or be removed from office, or remove from the city of Buffalo, or become incapable of executing the duties of said office, the said clerk shall appoint another deputy clerk in his place. The deputy clerk shall receive a salary of fifteen hundred dollars a year, to be paid quarterly by the county of Erie.

§ 3. Section two of chapter two hundred and thirty-two of the laws of eighteen hundred and seventy-four, entitled "An act in relation to the superior court of

same compensation paid to jurors attending the circuit court. The court for the trial of issues of fact or for the trial of indictments, may, in its discretion, order talesmen to be drawn from said list, and may order the sheriff to summon the same forthwith; and if any person so drawn as a talesman shall not be found by the sheriff the court may cause the name of such person to be returned to the box. [*Thus amended by L. 1867, ch. 361.*]

Buffalo," passed April twenty-first, eighteen hundred and seventy-four, is amended so as to read as follows :

Special deputy clerks ; appointment ; salary. § 2. The clerk of said superior court of Buffalo shall, if the judges of said court deem it necessary for the proper transaction of the business of said court, also appoint two proper and suitable persons as special deputy clerks of said court, who shall hold their office in the same manner and subject to the same restrictions as to removal as the deputy clerk of said court. One of said special deputy clerks shall receive a salary of eight hundred dollars a year, to be paid quarterly by the county of Erie, and the compensation of the other of said special deputy clerks shall be paid by the clerk of said court.

[L. 1874, ch. 232, except § 5 thereof, was repealed by L. 1877, ch. 417. *Scilicet* therefore, that the foregoing statute is an independent enactment.]

ARTICLE THIRD.

THE CITY COURT OF BROOKLYN.

[Most of the former laws relating to civil proceedings in this court have been repealed, having been superseded by provisions of the Code of Civil Procedure. Those relating to criminal proceedings, although not formally repealed, have been mostly superseded by the Code of Criminal Procedure, and are, herefore, omitted. A few sections are retained, which either have been left unaffected by subsequent legislation, or may, in the opinion of the editor, be of some force, either intrinsically or as explanatory of other provisions.]

L. 1849, Chap. 125—An act to establish courts of civil and criminal jurisdiction in the city of Brooklyn.

City judge to be elected. SECTION 1. There shall be elected in the city of Brooklyn at the next charter election to be held in said city, and every six years thereafter, a city judge, who shall hold his office for six years from the first day of May next, after his election, and shall be subject to removal in the same manner as the county judge.

[Sections 2-10 were repealed by L. 1877, ch. 417.]

[Sections 11 and 12 were repealed by L. 1886, ch. 393.]

[Section 13 was repealed by L. 1870, ch. 470.]

[Sections 14-19 were repealed by L. 1877, ch. 417.]

Duty of district-attorney. § 20. The district-attorney of the county of Kings shall prosecute all indictments which may be found by the grand jury impanelled by the said city court, and all indictments which shall be transmitted to the said city court, in the same manner as if such indictment had been tried in a court of sessions of the county, and shall have the same power in all respects.

Provision in case of absence. § 21. In case of the absence, inability to attend, or vacancy in the office of said district-attorney, the said city court may designate some suitable person to discharge the duties of the said district-attorney, in said city court for the time being, who shall receive such compensation therefor as the board of supervisors of the county of Kings shall fix for that purpose, and which shall be allowed and paid by the said board of supervisors as other county charges are allowed and paid.

[Section 22 was repealed by L. 1877, ch. 417.]

[Section 23 was repealed by L. 1870, ch. 470.]

[Sections 24-26 were repealed by L. 1877, ch. 417.]

[Sections 27-37, relating to justices of the peace and police justices, are immaterial here.]

[Sections 38 and 39 are omitted as temporary.]

L. 1853, Chap. 338—An act in relation to the courts and jurors in the county of Kings.

[All except § 4 repealed by L. 1877, ch. 417.]

Criminal or civil business. § 4. The city court of Brooklyn may transact criminal or civil business at any term thereof.

L. 1865, Chap. 170—An act in relation to the appointment of a phonographic reporter to the city court of Brooklyn.

[Sections 1-5 were repealed by L. 1877, ch. 417.]

Salary of reporter; by whom to be paid. § 6. The salary of the said officer shall be at the rate of two thousand dollars per annum, and the board of supervisors of Kings county, are hereby directed to raise a sufficient sum of money, in addition to the sum they are now authorized to raise by law for the said salary, and all laws of this state applicable to the raising of money in the said county of Kings by the board of supervisors, are hereby made applicable to this section of this act. [*Thus amended by L. 1867, ch. 796.*]

[Sections 7-9 were repealed by L. 1877, ch. 417.]

L. 1870, Chap. 470—An act to increase the number of judges of the city court of Brooklyn, and to regulate the civil and criminal jurisdiction thereof.

Additional judges of city court may be elected; form of ballot; election, how conducted; canvass of votes; official terms, when to commence. SECTION 1. Two additional judges of the city court of Brooklyn shall be chosen by the electors of that city at the time provided by law for the first election of judges of the court of appeals, under the sixth article of the Constitution. The persons voted for by any elector shall be upon one ballot, which shall be separate from the ballot for judges of the court of appeals. The ballot shall be indorsed "City Court," and the inspectors and canvassers holding the election in said city for the said judges of the court of appeals shall be the inspectors and canvassers of such election, and shall keep a separate box in which the ballots shall be deposited. The two persons receiving the highest number of votes shall be deemed chosen at such election. The votes shall be canvassed as now provided by law in reference to other elections in said city, and in all other respects the provisions of the act providing for the said first election of the judges of the court of appeals shall be applied, so far as applicable, to the election in this section provided for. The official terms of the judges elected under this act shall commence on the first Monday of July next, on or before which day they shall take the oath of office.

[Sections 2-7 were repealed by L. 1887, ch. 417.]

[Sections 8 and 9 amend L. 1849, ch. 125, §§ 11 and 12.]

[Section 10 repeals L. 1849, ch. 125, §§ 13 and 23.]

[Section 11 was repealed by L. 1877, ch. 417.]

[Section 12 amends L. 1849, ch. 125.]

[Sections 13-17 were repealed by L. 1877, ch. 417.]

Salaries; how levied and collected. § 18. The judges of the said court shall each receive an annual compensation, the same in amount as that now received by the present city judge, to be paid quarterly by the county treasurer of the county of Kings, out of moneys to be levied by the supervisors of the said county annually, and collected in the same manner as other county charges are levied and collected.

[Sections 19-21 were repealed by L. 1877, ch. 417.]

TITLE VI.*Of Mayors' Courts in Cities.*

[Repealed by L. 1880, ch. 245.]

TITLE 6.

[317-319]

TITLE 1.

[220-223]

CHAPTER II.

OF COURTS OF PECULIAR AND SPECIAL JURISDICTION.

TITLE I.—OF SURROGATES' COURTS.
[Repealed.]TITLE II.—OF THE COURTS OF SPECIAL SESSIONS OF THE PEACE.
[Repealed.]TITLE III.—OF SPECIAL JUSTICES' COURTS IN THE SEVERAL CITIES OF THIS STATE.
[Repealed.]

TITLE IV.—OF COURTS HELD BY JUSTICES OF THE PEACE.

TITLE I.

Of Surrogates' Courts.

[This entire title was repealed by L. 1880, ch. 245.]

*Acts relating to the Surrogates' Courts.***L. 1870, Chap. 74—An act in relation to the records of surrogates' courts.**

Acts of surrogates in signing records confirmed. SECTION 1. All acts, hitherto, of surrogates and officers acting as such in completing, by signing, in their own names, the unsigned and uncertified records of wills and of the proofs and examinations taken in the proceedings of probate thereof, before their predecessors in office, are hereby confirmed and declared to be valid and in full compliance with the pre-existing statutory requirements.

[Section 2 was repealed by L. 1880, ch. 245.]

L. 1879, Chap. 406—An act in relation to proceedings in the surrogates' courts of the several counties of the state, except the county of New York.

Revocation of letters testamentary, etc. SECTION 1. Upon application of any executor, administrator or collector, to whom letters shall have been granted by the surrogate of any of the counties of this state, except the county of New York, or the testamentary trustee or guardian named in any will proved in his court, and on such notice to the persons interested in the estate as he shall direct, the surrogate may, by his order, revoke such letters, and discharge such executor, administrator, collector, testamentary trustee, or guardian from his trust, upon such terms and conditions as in his judgment may be proper for the security of the estate, and thereupon issue letters of administration, letters of administration with the will annexed, or letters of collection, or appoint a successor

to such trustee or guardian; but such surrogate shall require such executor or testamentary trustee, so to be appointed, to give security for the faithful performance of such trust.

[See Code Civ. Proc., §§ 2689, 2814, 2835, etc.]

L. 1880, Chap. 482—An act authorizing the surrogate of the county of Erie to appoint a stenographer for the surrogate's court of said county.

Surrogate of Erie county may appoint and remove stenographer. SECTION 1. The surrogate of the county of Erie shall appoint and may at pleasure remove a stenographer for the surrogate's court of said county, who shall be entitled to a salary to be fixed by said surrogate, but which shall not exceed nine hundred dollars a year and to be paid as the salary of the clerk of said surrogate's court is paid.

L. 1881, Chap. 40—An act in relation to surrogates' courts.

Practice on appeals taken since Sept. 1, 1880. SECTION 1. When an appeal shall be or has been taken after the first day of September, eighteen hundred and eighty, from any order, decree or determination made or rendered in a surrogate's court, in any matter or proceeding commenced before the first day of September, eighteen hundred and eighty, the said appeal shall be heard upon a case to be made and settled as provided by section two thousand five hundred and seventy-six of the Code of Civil Procedure; but if on any such appeal taken before the passage of this act the case has been made and settled, or the appeal perfected according to and in conformity with the laws and practice regulating appeals from orders, sentences or decrees of surrogates' courts in force in the state on the thirty-first day of August, eighteen hundred and eighty, then such appeals and settlement of the case thereon shall be valid and such appeals shall be heard and decided in conformity to the laws and practice regulating appeals from orders, sentences and decrees of surrogates' courts in force in this state on the thirty-first day of August, eighteen hundred and eighty.

26 Hun, 179; 26 Hun, 550, aff'd 91 N. Y., 662; 32 Hun, 599.

L. 1884, Chap. 350—An act in relation to the examination of the accounts of the surrogate's court and the transfer of the moneys and securities to the county treasurers.

[This act has been omitted, as it appears to be temporary.]

L. 1884, Chap. 490—An act relating to the discharge of the duties of the surrogate of the county of Kings, in case of a vacancy in the office, or the disqualification or disability of the surrogate.

When county judge to discharge duties of surrogate; when district-attorney. SECTION 1. In the county of Kings, when the office of surrogate is vacant or the surrogate certifies by a written certificate filed in his office that he is disabled, by reason of sickness or absence, all the duties of the office must be discharged until the vacancy is filled or the disability ceases, by the county judge of the county of Kings; or, if there is no county judge, or he certifies in like manner that he is so disabled, by the district-attorney of the said county. And when the surrogate of the said county is precluded or disqualified from acting, with respect to any particular matter, he shall file a certificate to that effect in his office, and thereupon all his jurisdiction and powers, with respect to that matter, vest in and must be discharged by the county judge. Where the county judge files in the surrogate's office a certificate that he is precluded or disqualified from acting with respect to any particular matter, jurisdiction whereof would otherwise vest in him by this section, all the jurisdiction and powers of the office of surrogate with re-

spect to that matter vest in and must be discharged by the said district-attorney. The proceedings in any matter or cause wherein the county judge or the district-attorney shall act, as prescribed in this section, shall be governed by section twenty-four hundred and ninety-four of the Code of Civil Procedure.

When matter to be transferred to supreme court § 2. But where in any matter or cause in the said surrogate's court before either of the officers specified in the last section, an issue shall be joined, or a contest shall arise, either upon the facts or upon the law, the said officer may in his discretion make an order to transfer such matter or cause to the supreme court, to be heard and decided at a special term, thereof, held in the said county of Kings, which order shall be recorded in the said surrogate's office, and thereupon such matter or cause shall be transferred accordingly. And a certified copy of such order, together with the appropriate certificate or certificates as provided in section first of this act, shall be sufficient and conclusive evidence of the jurisdiction and authority of the supreme court in such matter or cause; which in all respects shall be governed by sections twenty-four hundred and ninety and twenty-four hundred and ninety-one of the said Code of Civil Procedure.

When surrogate to file certificate prescribed in Code Civil Proc. § 3. If there is no officer qualified to act as provided in the first section of this act, when the surrogate is precluded or disqualified with respect to a particular matter or cause, the surrogate of the said county must file in his office a certificate as prescribed in section twenty-four hundred and eighty-five of the Code of Civil Procedure, which has the effect provided for in that section, with respect to any county, other than New York or Kings.

Certain sections of Code not to apply to Kings county. § 4. Sections twenty-four hundred and eighty-six, twenty-four hundred and eighty-seven and twenty-four hundred and eighty-eight of the Code of Civil Procedure shall not apply to the county of Kings. And after a final order or decree has been made in any matter or cause transferred to the supreme court as prescribed in section three of this act, the said court shall direct the papers to be returned and filed, and transcripts of all orders and decrees made therein to be recorded in the surrogate's office, and when so filed and recorded they shall have the same effect as if they were filed and recorded in a cause pending in the surrogate's court.

Board of supervisors may appoint person to act as surrogate. § 5. The board of supervisors of the county of Kings may appoint a person to act as surrogate of that county in a case where it is prescribed by section twenty-four hundred and ninety-two of the Code of Civil Procedure that a board of supervisors may make such an appointment, and with like effect as prescribed in that section, and in sections twenty-four hundred and ninety-three and twenty-four hundred and ninety-four of the Code of Civil Procedure.

L. 1885, Chap. 367 — An act to confer additional powers upon the clerk of the surrogate's court of Kings county in relation to the probate of wills in certain cases.

Additional powers conferred on clerk. SECTION 1. The clerk of the surrogate's court of Kings county, appointed pursuant to section twenty-five hundred and nine of the Code of Civil Procedure of the state of New York, may, in addition to the powers therein enumerated, also exercise, concurrently with the surrogate of said county, the following powers of the surrogate: Upon the return of a citation issued from said surrogate's court upon a petition for the probate of a will, where no objection to the same is filed; or, where all the persons entitled to be cited, sign and verify the petition, or personally, or by attorney, appear on the probate thereof, cause the witnesses to the will to be examined before him, and such examinations must be reduced to writing, and for such purpose he is hereby authorized to administer and certify oaths and affirmations in such cases in the same manner and with the same effect as if administered and certified by the surrogate.

L. 1884, Chap. 530—An act in relation to the office of surrogate of the county of New York.

Board of aldermen not to have power to appoint surrogate, etc. SECTION 1. On and after the passage of this act, the board of aldermen of the city of New York shall cease to have or exercise any powers in regard to the appointment of a surrogate of the county of New York, or in regard to the appointment, number and salaries of assistants to such surrogate, or of other clerks, employees or subordinates in or attached to the office of said surrogate, or in regard to the receipt or payment of fees in said office.

Vacancies, how to be filled. § 2. When a vacancy shall occur otherwise than by the expiration of a term, in the office of surrogate of the county of New York, the same shall be filled for a full term at the next general election happening not less than three months after such vacancy occurs; and until any such vacancy shall be so filled, the governor may appoint to fill such vacancy. Any such appointment shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

Appointment and removal of clerks, etc. § 3. The surrogate may appoint, and at pleasure remove, all clerks, officers, attendants and employees in his office, or connected with his court. Subject to the revision of the board of estimate and apportionment, the number and duties of all such clerks, officers, attendants and employees, with their respective salaries, to be paid by the county, shall be such as the surrogate shall designate and approve; provided, however, that the aggregate expense thereof shall not exceed the total amount duly appropriated to the said surrogate's court and office for such purposes.

Estimate by surrogate to board of apportionment, etc. § 4. The surrogate shall, not less than thirty days prior to the first of November, eighteen hundred and eighty-four, and in each year thereafter within the same period, send to the board of estimate and apportionment an estimate in writing of the amount of expenditure, specifying in detail the objects thereof required in his office and court for the ensuing year. The said estimate must contain a statement of each of the salaries of the officers, clerks, attendants, employees and subordinates in said office and court. A duplicate of the estimate and statement shall be made at the same time to the board of aldermen. The said board of estimate and apportionment shall, in making its provisional and final estimates and in approving the salaries of such officers, clerks, attendants and employees, consider the said estimate and statement and make such provision for the objects of expenditure therein specified as to such board may seem necessary and sufficient.

Security from assistants. § 5. The surrogate is hereby authorized and empowered to require from his assistants such security for the faithful performance of their duty as he may deem necessary and proper.

Surrogate, etc., not to receive fees. § 6. From and after the passage of this act the surrogate of the county of New York, the assistants to said surrogate or other clerks, employees or subordinates in or attached to the office or court of said surrogate, shall not charge or receive to his or their own use and benefit, or otherwise than for the benefit of said county, any fees, perquisites or emoluments for any services rendered by him or them by virtue of his or their official positions except as provided in subdivision one of section seven of this act.

Excepted cases, when fees allowed. § 7. On and after the passage of this act no fees, perquisites or emoluments shall be charged or received by the surrogate of the county of New York, his assistants, clerks, employees or subordinates, for any services rendered by him or them by virtue of his or their official positions, except as hereinafter specified.

1. Where in a case prescribed by law or in any other case, upon the application of a party, the surrogate goes to a place other than his office or the courtroom where he is required to hold court, in order to take testimony, he may

charge and receive to his own use, ten cents for each mile for going and the same sum for returning.

2. He must charge and receive to the use of the county for a copy of a paper, ten cents for each folio.

Notice to be posted in office. § 8. Within ten days after the passage of this act a surrogate of the county of New York shall cause to be posted in conspicuous positions in the office or offices of the various clerks attached to the said office or court of the said surrogate notices printed in type not smaller than double great primer as follows: "No clerk or assistant in this office is authorized to charge any fee or receive any gratuity for any official services rendered by him, except ten cents a folio for making copies of papers filed or recorded in this office. Any clerk or assistant who does charge a fee or receive a gratuity except as above provided, is guilty of a misdemeanor."

Fee book to be kept, entries to be made therein. § 9. The said surrogate shall keep a book showing in detail the fees received under subdivision two of the last preceding section, the nature of the paper copied and the person by whom such fees are paid, and shall pay the fees as received monthly into the treasury of the city of New York, furnishing at the same time to the comptroller of said city an exact account of the fees so received in such form as said comptroller may prescribe.

Persons not connected with office not to have desks, etc. § 10. No person unless officially connected with the surrogate's office or court shall after the passage of this act be allowed permanently to have or occupy any desk or position in said office or court as his place of transacting business. The surrogate is expressly prohibited from allowing any person who is not a duly appointed clerk, officer or employee of his said office or court to have any special privileges in or about said office.

Acts repealed. § 11. Sections twenty-five hundred and two of the Code of Civil Procedure, and section twenty-five hundred and eight of said Code, so far as said section relates to the county of New York, and sections eleven hundred and eighty, eleven hundred and eighty-nine, eleven hundred and ninety-one, and twelve hundred and four of chapter four hundred and ten of the laws of eighteen hundred and eight-two, and all acts and parts of acts inconsistent with this act are hereby repealed.

L. 1888, Chap. 232—An act to authorize the surrogate of the county of Albany to appoint a stenographer.

Appointment; salary; duties; fees. SECTION 1. The surrogate of the county of Albany is hereby authorized to appoint by a written appointment to be filed with the county treasurer of the county of Albany a court stenographer. Said stenographer shall receive a salary of not to exceed twelve hundred dollars per annum, and shall deliver to the surrogate a full copy of all minutes taken by him; and upon the receipt of his fees, which shall not exceed three cents per folio, a like copy to the party, or each of the parties, to the proceeding in which the minutes were taken.

Other clerical duties; removal. § 2. Said stenographer, when not actually engaged in the discharge of his duties as such, shall perform such clerical duties in connection with the surrogate's court as the surrogate may direct and may be removed by said surrogate at pleasure by the filing of a notice to that effect with the county treasurer of Albany county. The provisions of the Code of Civil Procedure applicable to stenographers shall apply to such stenographer except where they conflict with the provisions of this act.

TITLE II.

ART 2.

[223-224]

Of the Courts of Special Sessions of the Peace.

[Repealed by L. 1880, ch. 245.]

TITLE III.

[224]

Of Special Justices' Courts in the several Cities of this State.

[Repealed by L. 1880, ch. 245.]

TITLE IV.

[224-226]

Of Courts held by Justices of the Peace.

- ART. 1.—Of the jurisdiction of justices' courts.
[Repealed by L. 1880, ch. 245.]
- ART. 2.—Of the commencement of suits, and the service and return of process.
- ART. 3.—Of the appearance of parties.
[Repealed by L. 1880, ch. 245.]
- ART. 4.—Of pleadings and of set-offs.
[Repealed by L. 1880, ch. 245.]
- ART. 5.—Of adjournments.
[Repealed by L. 1880, ch. 245.]
- ART. 6.—Of compelling the attendance of witnesses.
[Repealed by L. 1880, ch. 245.]
- ART. 7.—Of the trial of issues of fact, and the incidents thereto.
[Repealed by L. 1880, ch. 245.]
- ART. 8.—Of judgments, and filing transcripts thereof.
[Repealed by L. 1880, ch. 245.]
- ART. 9.—Of executions; of sales thereon, and of imprisonment.
[Repealed by L. 1880, ch. 245.]
- ART. 10.—Of the removal of causes to the court of common pleas, by certiorari.
[Repealed by L. 1880, ch. 245.]
- ART. 11.—Of appeals to the courts of common pleas.
[Repealed by L. 1880, ch. 245.]
- ART. 12.—Of the fees of officers, and of witnesses and jurors, for services under this title.
[Repealed by L. 1880, ch. 245.]
- ART. 13.—General provisions concerning justices' courts, and proceedings therein.

ARTICLE SECOND.

OF THE COMMENCEMENT OF SUITS, AND THE SERVICE AND RETURN OF PROCESS.

SEC. 11-22. [Repealed.]

23. Bond to be given before warrant to issue to detain a canal boat.

24. Penalty and condition of bond.

25-38. [Repealed.]

[Sections 11-22 were repealed by L. 1880, ch. 245.]

§ 23. Whenever an action shall be brought to recover any penalty imposed by law for taking any rails, boards, planks or staves, from the banks or vicinity of a canal, in which a justice is authorised to direct the detention of any canal boat, he shall not endorse such direction on any warrant, unless a bond, as prescribed in the next section, shall be executed and delivered to such justice.

Bond to authorize detention of canal boats.

[L. 1824, 280, §§ 3, 4 and 5. L. 1827, 373, § 2.]

TITLE 4.
Its penalty
and condi-
tion.

§ 24. Such bond shall be in the penalty of at least one hundred dollars, with one or more sureties, to be approved by such justice, conditioned that such action shall be prosecuted to judgment with all convenient speed, and that if judgment be rendered in favor of the defendant, the obligors will pay the costs and charges which shall be adjudged against the plaintiff, and all damages which may ensue from the detention of such boat and the cargo thereof, and the crew navigating the same.

[The same.]

[Sections 25-38 were repealed by L. 1880, ch. 245.]

L. 1881, Chap. 414 — An act permitting the verification of pleadings in the justice's court.

Plaintiff or agent may make complaint in writing in actions to recover money only ; to be verified. SECTION 1. In an action brought in any of the justices' courts of this state arising on contract for the recovery of money only, or on an account, the plaintiff or his agent, at or before the time of the issuing of the summons, may make a written complaint stating in a plain, concise manner the facts constituting the cause of action, specifying therein the amount actually due from the defendant to the plaintiff in said action, and praying judgment against the said defendant for the amount so claimed to be due to him, which said complaint shall be subscribed by the plaintiff or his agent, and shall be verified in the manner and as provided by section five hundred and twenty-six of the Code of Civil Procedure. Said summons and complaint shall be attached and shall be served upon the defendant by delivering to and leaving with him, personally, true copies thereof, not less than six nor more than twelve days before the return day thereof, and the official certificate of the constable making such service shall be sufficient evidence thereof.

40 Hun, 246.

Answer to be in writing and verified. § 2. In case the defendant appears and answers in such action, his answer shall be in writing, and shall be verified as above provided for the verification of the complaint, and must contain :

1. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.

2. A statement of any new matter constituting a defence, offset or counterclaim.

In case of failure to answer or demur, complaint to be deemed to be true. § 3. In case the defendant fails to answer or demur to said complaint, as hereinbefore provided, at the time of the return of said summons, he shall be deemed to have admitted the allegations of the complaint as true, and the court shall, upon filing the summons and complaint, with due proof of the service thereof, enter judgment for the said plaintiff and against the defendant, for the amount demanded, in such complaint, with costs, without further proof.

35 Hun, 345.

[267-272]

ARTICLE THIRTEENTH.

GENERAL PROVISIONS CONCERNING JUSTICES' COURTS, AND PROCEEDINGS THEREIN.

SEC. 231. This title to apply to justices' courts in Albany, Hudson and Troy ; but not in New York.

232-267. [Repealed.]

268 & 269. Proceedings to remove from office constables who have neglected to pay over money collected.

270. Office vacated by service of instrument of removal.

271-286. [Repealed.]

§ 231. The several provisions of this title, so far as the same may be applicable, shall apply to the justices' courts in the cities of Albany, Hudson and Troy, respectively, except in those cases where repugnant provisions exist in the acts organizing those courts, or relating thereto; but the provisions of this title shall not be considered as applicable to the courts in the city of New York.

[Sections 232-244 were repealed by L. 1880, ch. 245.]

[Sections 245-248 were repealed by L. 1877, ch. 417.]

[Sections 249-267 were repealed by L. 1880, ch. 245.]

TITLE 4.
This title extended to certain special courts.

§ 268. If any constable shall have collected any money on execution, and a recovery therefor shall have been had against his sureties, upon a complaint thereof being made to any three justices of the same town, they shall summon such constable to appear before them, to show cause why he should not be removed from his office.

Constables to be summoned, &c.

§ 269. If such complaint be established to the satisfaction of such justices, or any two of them, after a hearing of the parties, or after the refusal or neglect of the constable to appear upon such summons, they shall, by an instrument under their hands, remove such constable from his office, assigning therein the reason of such removal, and shall file the same in the office of the town clerk, who shall forthwith cause a certified copy thereof to be served on such constable.

When and how to be removed.

§ 270. Upon the service of a copy of such instrument, certified by the town clerk, on the constable named therein, such constable shall cease to have any power or authority as such, and his office shall be deemed vacant.

[273]
When office vacated.

[The remainder of the article, (including §§ 282-286 added by L. 1830, ch. 320), was repealed by L. 1880, ch. 245.]

L. 1871, Chap. 610—An act to legalize executions issued by the county clerks of the several counties of this state, upon judgments rendered by justices of the peace and docketed in their respective offices, and the sales of property on such executions.

When to issue executions. SECTION 1. Executions issued by the county clerks of the several counties of this state, between the twelfth day of May, in the year one thousand eight hundred and sixty-nine, and the sixth day of May, in the year one thousand eight hundred and seventy, on judgments of justices of the peace, docketed in their respective offices, and the issuing of all such executions, and the sales of property on all such executions, are hereby made and declared legal and valid; but nothing herein contained shall affect any action or proceeding now pending to set aside, or have declared void, any such execution or sale.

TITLE 2.

[274]

CHAPTER III.

GENERAL PROVISIONS CONCERNING COURTS OF JUSTICE, AND THE POWERS AND DUTIES OF CERTAIN JUDICIAL OFFICERS.

TITLE I.—GENERAL PROVISIONS CONCERNING THE COURTS OF JUSTICE SPECIFIED IN THE TWO PRECEDING CHAPTERS.

[Repealed.]

TITLE II.—GENERAL PROVISIONS CONCERNING COURTS OF RECORD, AND THE POWERS AND DUTIES OF CERTAIN JUDICIAL OFFICERS.

TITLE I.

General Provisions concerning the Courts of Justice specified in the two preceding Chapters.

[Repealed by L. 1877, ch. 417, and L. 1880, ch. 245.]

[276-282]

TITLE II.

General Provisions concerning Courts of Record, and the Powers and Duties of certain judicial Officers.

ART. 1.—Provisions concerning courts of record, their process and proceedings.

[Repealed by L. 1877, ch. 417.]

ART. 2.—Of the powers and duties of certain judicial officers.

ART. 3.—Of the officers of courts of record, their duties, privileges and liabilities.

[Repealed by L. 1877, ch. 417.]

ART. 4.—Miscellaneous provisions concerning courts of record.

ARTICLE SECOND.

OF THE POWERS AND DUTIES OF CERTAIN JUDICIAL OFFICERS.

SEC. 16-39. [Repealed.]

40. Powers of judges of county courts.

41. Powers of commissioners of deeds.

42 & 43. [Repealed.]

44 & 45. Authority of notaries public.

46 & 47. [Repealed.]

48. Their liabilities for misconduct.

49-53. [Repealed.]

54. Clerks, registers, etc., to keep offices open during certain hours.

55. Sheriffs to keep offices; notice of place to be filed.

56. Papers may be served at sheriff's office.

57. When they may be served on county clerk.

58. Sheriffs not to hold courts, except in certain cases.

59. Not to take bonds, etc., in any case not prescribed by law.

60. Who to assign bonds, in case of vacancy in sheriff's office.

61. Certain indexes to be kept by county clerks and register.

62 & 63. [Repealed.]

[Sections 16-39 were repealed by L. 1877, ch. 417.]

§ 40. Judges of county courts shall have power,

1. To take the proof and acknowledgment of conveyances of real estate, and the discharge of mortgages:

2. To take the acknowledgment of bail in any action in the supreme court, and in the court of common pleas of the county for which they are appointed:

3. To take the acknowledgment of satisfaction of judgments in the supreme court, and in the court of common pleas of their county: and,

4. To perform such other duties as are or may be enjoined by law.

§ 41. Commissioners of deeds appointed for any county or city, have power,

1. To take the proof and acknowledgment of conveyances of real estate, and the discharge of mortgages:

2. To take the acknowledgment of bail in any action in the supreme court, and in the court of common pleas of the county for which they are appointed; or in the mayor's court of the city for which they are appointed; and in the city and county of New York, in any action in the superior court of law therein:

3. To take the acknowledgment of satisfaction of judgments, in the court of common pleas of the county for which they are appointed, or in the mayor's court of the city for which they are appointed, or in the supreme court; and to perform such other duties as are or may be enjoined by law.

[L. 1818, 44.]

[Sections 42 and 43 were repealed by L. 1877, ch. 417.]

§ 44. Notaries public have authority to demand acceptance and payment of foreign bills of exchange, and to protest the same for non-acceptance and non-payment; and to exercise such other powers and duties, as by the law of nations, and according to commercial usage, or by the laws of any other state, government or country, may be performed by notaries public.

§ 45. They may also demand acceptance of inland bills of exchange, and payment thereof, and of promissory notes, and may protest the same for non-acceptance or non-payment, as the case may require. But neither such protest, nor any note thereof, made by any notary in this state, shall be evidence in any court of this state, of any facts therein contained, except in the cases specified in the next section.

[Sections 46 and 47 (revised in Code Civ. Proc., § 924), were repealed by L. 1877, ch. 417.]

§ 48. For any misconduct in any of the cases where notaries public appointed under the authority of this state, are authorised to act, either by the laws of this state or of any other state, government or country, or by the law of nations or by commercial usage, they shall be liable to the parties injured thereby, for all damages sustained; and shall be subject to criminal prosecution and punishment, in the same cases, and in the same manner, in which other public officers of this state, would be liable for misconduct in any official duty or act, authorised or enjoined by the laws of this state.

[Sections 49-53 were repealed by L. 1877, ch. 417.]

ART. 2

Powers of
county
judges.

Powers of
commissioners of
deeds.
[283]

Powers of
public no-
taries.
4 Park. Cr.
R., 215; 49
How. Pr.
R., 277.

Id.

[284]

Their lia-
bilities for
miscon-
duct.

[285]

TITLE 2.

Offices of
clerks, &c.,
to be kept
open.
53 N. Y., 86;
26 How.
Pr. R., 183.

§ 54. Clerks of counties and of courts of record in this state, and the register of deeds in the city and county of New York, shall respectively keep open their several offices for the transaction of business, every day in the year, except Sundays and such other days as are or shall be declared by law to be holidays, in the county of New York, from nine o'clock in the forenoon to four o'clock in the afternoon, and in each of the other counties of this state, between the thirty-first day of March and the first day of October, from eight o'clock in the forenoon to six o'clock in the afternoon, and between the thirtieth day of September and the first day of April, from nine o'clock in the forenoon to five o'clock in the afternoon. [*Thus amended by L. 1860, ch. 276.*]

Sheriffs'
offices.
26 How.
Pr. R., 183.

§ 55. It shall be the duty of the sheriff of every county, to keep an office in some proper place in the city or village in which the county courts are held; of which he shall file a notice in the office of the clerk of the county. If there be more than one place of holding courts, the notice shall specify in which his office will be kept, or it may specify that an office will be kept in all such places, if he thinks proper. Such office shall be kept open during the hours and on the days in the last section specified.

Papers
may be
served
there.
16 Abb., N.
S., 326.

§ 56. Every notice or other paper which shall be required to be served on any sheriff, may be served by leaving the same at the office designated by him in such notice, during the hours for which it is herein required to be kept open; but if there be any person belonging to such office therein, such notice or paper shall be delivered to such person; and every such service shall be deemed equivalent to a personal service on such sheriff.

When on
county
clerk.

§ 57. If no notice shall be filed by any sheriff with the county clerk as herein required, the service of all papers on such sheriff may be made by leaving them at the office of the county clerk, with such clerk or his deputy; and the same shall be deemed equivalent to a personal service on such sheriff.

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When sher-
iffs to hold
courts.
7 How. Pr.
R., 323.

§ 58. No sheriff shall be authorised to hold any court for any purpose whatever, except to execute writs of inquiry, and such special writs as may be directed to him, pursuant to any statute, and in the cases provided by law to inquire into any claim to property, seized or levied upon by him.

Taking
bonds, &c.

§ 59. No sheriff or other officer, shall take any bond, obligation or security, by colour of his office, in any other case or manner than such as are provided by law; and any such bond, obligation or security, taken otherwise than as herein directed, shall be void.

18 N. Y., 117; 13 Barb., 368; 4 Barb., 52; 2 Hill, 218; 1 Hill, 22, 299; 23 Wend., 606; 21 Wend., 57, 90, 607; 19 Wend., 185; 19 Johns. R., 235; 7 Johns. R., 160; 23 N. Y., 321; 13 Hun, 474; 17 J. & S., 211; 31 Hun, 267; 33 Hun, 348; 39 Hun, 513; 61 N. Y., 573; 84 N. Y., 222; 43 Hun, 201.

Assigning
bonds, &c.,
upon va-
cancy in
office.

§ 60. Whenever any sheriff is required by law to assign any bond taken by him in the progress of any cause or proceeding, to any party, and the office of such sheriff shall be vacant, his under sheriff, or the person acting in the place of such sheriff, is authorised, and may be compelled to execute such assignment, in the name of the

sheriff to whom such bond was given; which assignment shall be as ART. 2.
valid and effectual as if executed by said sheriff.

§ 61. It shall be the duty of the clerk of each county in this state, and of the register of the city and county of New York, to attach to every book kept in his office, in which deeds or mortgages shall be recorded, or collectors' bonds entered, an index to the matters contained in such books, arranged in alphabetical order, under the names of the several parties to such matters, with references to the pages where the same may be found; which, together with such books, shall at all proper times be open for the inspection of any person paying therefor the fees allowed by law.

Indexes to
books of
deeds, &c.
24 Wend.,
182; 52 N.
Y., 86; 87
N. Y., 287.

[Sections 62 and 63 were repealed by L. 1877, ch. 417.]

L. 1859, Chap. 360 — An act authorizing notaries public of the state of New York to perform the duties now performed by commissioners of deeds.

Additional powers to notaries. SECTION 1. In addition to their present powers, notaries public of this state are hereby authorized to administer oaths and affirmations, and to take the proof and acknowledgments of deeds, mortgages and any other papers for use or record in this state, in all the cases where the same may now be taken and administered by commissioners of deeds, and under the same rules, regulations and requirements prescribed to commissioners of deeds, and such notaries' acts may be performed without official seal.

76 N. Y., 220.

L. 1863, Chap. 508 — An act to define and limit the number of notaries public in the several counties in this state, and confer authority to take affidavits and acknowledgments.

[Section 1 is in chapter 5, p. 380, *ante*.]

Powers of notaries. § 2. Notaries public shall have all the powers now conferred upon them by law, and shall also have power to take affidavits and certify to the same, and to take and certify the acknowledgment and proof of deeds and other instruments in writing in all cases where justices of the peace or commissioners of deeds may now take and certify the same, and all acts of notaries public in making or taking such certificates of the acknowledgment or proof of deeds or other instruments in writing since the passage of the act, chapter three hundred and sixty of the laws of eighteen hundred and fifty-nine, are hereby confirmed and declared valid.

L. 1872, Chap. 703 — An act to extend the powers of notaries public in the city and county of New York, and in the county of Kings.

Notaries appointed for either New York or Kings county may perform official acts in both counties. SECTION 1. Any notary public now or hereafter duly appointed and qualified in and for either the city and county of New York, or the county of Kings of this state, shall have, and hereby are invested with full power and authority to do and perform anywhere in said city and county of New York, or county of Kings, any and every act and thing which they are now by law author-

ized to do and perform within the county in and for which they are appointed respectively.

Statement to be made in body of affidavits and acknowledgments; clerk's certificate to be attached to entitle instrument to be recorded. § 2. Whenever a notary public of the city and county of New York, or county of Kings, pursuant to the power and authority in the preceding section given, shall take any affidavit or the proof or acknowledgment of any deed or other instrument of writing, to be used or recorded in this state, in a county other than that in and for which he shall have been appointed, he shall state in the body of such affidavit, or certificate of proof or acknowledgment, or after his signature thereto, as such notary, the name of the county in and for which he shall have been so appointed; and before any deed or instrument in writing so acknowledged shall be entitled to be recorded in any county other than that in and for which such notary was appointed, there shall be subjoined, or attached, to the certificate of proof or acknowledgment signed by such notary, a certificate under the hand and official seal of the clerk of the county in and for which such notary was appointed, specifying that he was at the time of taking such proof or acknowledgment a notary public in and for said county, commissioned and sworn and duly authorized to take the same; that such clerk is well acquainted with the handwriting of such notary, and verily believes that the signature to said certificate of proof or acknowledgment is genuine.

L. 1873, Chap. 807 — An act concerning notaries public in the counties of Kings, Queens, Richmond, Westchester, Rockland (and Orange)* and in the city and county of New York, and authorizing them to exercise the functions of their office therein.

Notaries public of counties named may file certificate of their appointment, etc., in any other of said counties; clerk to subjoin certificate; conveyances so acknowledged, etc., to be read in evidence. SECTION 1. Any notary public now or hereafter appointed for the county of Kings, Queens, Richmond, Westchester, Putnam, Suffolk, Rockland, Orange and Dutchess, or for the city and county of New York, upon filing a certified copy of his appointment with his autograph signature in the clerk's office of any other of said counties, is hereby authorized to exercise all the functions of his office in such other of said counties, and also in the county in which he resides, for each of such counties, with the same effect as he now possesses by law in the county for which he is appointed. And the county clerk of any of said counties in whose office any notary public appointed as aforesaid, shall have filed a certified copy of his appointment, with his autograph signature, is hereby authorized and required, whenever so requested, to subjoin to any certificate of proof or acknowledgment signed by such notary public, a certificate under his hand and official seal, specifying that said notary public has filed a certified copy of his appointment, with his autograph signature, in his office, and was at the time of taking such proof or acknowledgment duly authorized to take the same, and that said clerk is well acquainted with the handwriting of said notary public, and verily believes that the signature to the said certificate of proof or acknowledgment is genuine. And any conveyance so proved or acknowledged, and having such county clerk's certificate subjoined thereto, shall be entitled to be read in evidence or to be recorded in any of the counties of this state. [Thus amended by L. 1888, ch. 542, superseding L. 1880, ch. 234, and L. 1883, ch. 140.]

L. 1884, Chap. 270 — An act to extend the jurisdiction of notaries public.

Notary may file certified copy of appointment, etc., in adjoining county; clerk's certificate; acknowledgment, etc., valid. SECTION 1. Any notary public, now or hereafter

* It is supposed that the intent of L. 1883, ch. 140, § 2, was to add these words to the title of this act, although it purports to add them to the title of L. 1880, chap. 234, which amended an act amending this act.

duly appointed in and for any county in this state, upon filing a certified copy of his appointment with the certificate of the clerk of such county that he has duly qualified, together with his autograph signature, in the office of the clerk of any adjoining county, is hereby authorized and empowered to exercise all the functions of his office in such adjoining county, and also in the county in which he resides for such adjoining county, with the same powers he now possesses by law in the county for which he is appointed, and with the same effect. And the county clerk in whose office any notary public has filed a certified copy of his appointment, a certificate of his having qualified, and his autograph signature, is hereby authorized and required, whenever so requested, to subjoin to any certificate of proof or acknowledgment signed by such notary, a certificate under his hand and official seal, specifying that said notary public has filed a certified copy of his appointment, with his autograph signature, in his office, and was at the time of taking such proof or acknowledgment duly authorized to take the same; that he is well acquainted with the handwriting of said notary, and verily believes that the signature to the said certificate of proof or acknowledgment is genuine. And any instrument so proved or acknowledged and having such county clerk's certificate subjoined thereto shall be entitled to be read in evidence or to be recorded in any of the counties of this state. [*Thus amended by L. 1885, ch. 61, § 1.*]

[L. 1885, ch. 61, § 2. Nothing herein contained shall be construed to abridge the powers or restrict the jurisdiction of notaries public as provided in chapter eight hundred and seven of the laws of eighteen hundred and seventy-three, entitled "An act concerning notaries public in the counties of Kings, Queens, Richmond, Westchester and Rockland, and the city and county of New York, and authorizing them to exercise the functions of their office therein," and the several acts amendatory thereof.]

[For statutes legalizing irregular acts of notaries public, see *ante*, page 391.]

ARTICLE FOURTH.

ART. 4.

[390. 391]

MISCELLANEOUS PROVISIONS CONCERNING COURTS OF RECORD.

[This article was repealed by L. 1877, ch. 417.]

Acts on the same subject.

L. 1847, Chap. 280—An act in relation to the judiciary.

[So much of this act, as had not been previously repealed, was repealed by L. 1880, ch. 245, except certain sections, all of which, excepting § 65, have been repealed by L. 1883, ch. 111, and L. 1886, ch. 593.]

Clerks of counties to be clerks of circuit courts, etc. § 65. The clerks of the several counties, including the city and county of New York, by virtue of their offices shall be clerks of the circuit courts, courts of oyer and terminer, and except in the city and county of New York, of the county courts and courts of sessions within their respective counties; and all laws relative to the duties of the clerks of the present supreme and circuit courts, courts of oyer and terminer, general sessions of the peace and common pleas of their respective counties, so far as the same are consistent with the Constitution and the provisions of this act, shall apply to them as clerks of the supreme court, circuit courts, courts of oyer and terminer, county courts and courts of sessions in their respective counties. And all laws relative to the duties of register, assistant register and clerks in chancery, so far as the same are consistent with the Constitution and the provisions of this act, shall be deemed to apply to the duties of said clerks in suits and proceedings in equity in the courts of which they shall be clerks.

[This section (§ 65) repealed, as respects the city of New York, by L. 1881, ch. 537.]

L. 1883, Chap. 111 — An act to provide for the designation of justices of the peace to serve as members of courts of sessions.

Two justices to be designated. SECTION 1. Two justices of the peace, having at least one year to serve from the first day of January succeeding their designation, shall be designated in each county in this state, except the counties of New York and Kings to sit with the county judge in courts of sessions, during the calendar year commencing on the first day of January succeeding their designation.

Only one to be voted for by each elector. § 2. At every general election held on the Tuesday succeeding the first Monday of November, each elector may place upon his ballot, indorsed "county," under the words "for sessions," the name of one justice of the peace of the county, qualified as aforesaid; and the two justices of the peace receiving the greatest number of votes shall be designated as justices of the sessions for the term aforesaid.

29 Hun, 513.

When presiding judge may designate justice to sit. § 3. If either or both of said justices fail to attend at the commencement of a court of sessions, or during the term, or if his office be vacant, or if he be disqualified to act in any matter pending at that time, the county judge presiding at the court must designate some other justice or justices of the peace of the county to serve, as provided by sections forty-two and forty-three of the Code of Criminal Procedure.

[Section 4 repealing and temporary.]

L. 1847, Chap. 391 — An act authorizing courts of equity to order the sale of rights of pre-emption to real estate or chattels real in certain cases.

[See L. 1848, ch. 32, *post.*]

Absolute sale and conveyance when to be decreed by supreme court. SECTION 1. In all cases where several persons are the owners, or claim to be the owners of any real estate or chattels real, lying within the bounds of the city and county of New-York, having different estates, or estates in common therein, in possession, remainder or reversion, and which said person shall by virtue of such ownership, or claim to such ownership, be entitled or claim to be entitled by law to a pre-emptive right, to have, take, or demand the grant or lease of any other land, or easement in land, from the mayor, aldermen and commonalty of the city of New-York, the supreme court of this state shall have power, and such court is hereby vested with full power and authority, on the application of either of the said owners, or of the said mayor, aldermen and commonalty of the city of New-York, to decree an absolute sale and conveyance of such right of pre-emption, and to make such disposition of the net moneys arising from such sale, after the payment of the costs and expenses of the proceedings as shall be just and proper, according to the rights and interests of the said several owners. [*Thus amended by L. 1848, ch. 32.*]

Sale how to be made and conducted; proviso. § 2. Such sale shall be made and conducted on like notice by the like officer, and in the same manner and form as sales of real estate on the foreclosure of a mortgage by virtue of a decree or order of said court, and a deed of conveyance for the said right of pre-emption shall in like manner be executed and delivered to the purchaser; which deed shall vest in the purchaser absolutely all the claim, right, title and interest of the owner of the said right of pre-emption, and every of them, of, in or to the said right of pre-emption thus sold and conveyed; provided, always in every case the applicant shall give six weeks previous notice of such intended application if the owners entitled by law to such pre-emption right are residents; and six months previous notice of such intended application, if the owners are non-residents of the state,

by publication in two daily newspapers printed in the city of New-York, prior to such application to the court for an order of sale; and provided, also, that the court shall be satisfied that such order of sale shall not interfere with, or impair the obligation contained in any lease or contract made by the said mayor, aldermen and commonalty to or with any person or persons whatsoever.

[See L. 1848, ch. 32, § 2, *post.*]

Provision in case of infants. § 3. In all cases where any owner shall be an infant a guardian shall be appointed for such infant in such manner, who shall give the like security and possess the like powers and discharge the like duties as in cases for the partition of lands.

Notice how to be served on owners. § 4. Whenever any owner shall reside in the city of New-York, notice of such intended application shall be served personally on such owner, or by leaving the same at his dwelling-house with some person of suitable age and discretion, at least twenty days before such application is made; and in all cases where such owner shall reside out of the said city, and within any of the United States, and such place of residence be known to the applicant, such notice shall be served by mail, addressed to such owner at his place of residence at least three months before such application is made. Proof of such service by affidavit shall be made to the court before any order of sale shall be made.

Parties may purchase. § 5. Any of the parties to said suit may become the purchaser on such sale.

L. 1847, Chap. 470—An act to amend the act entitled “An act in relation to the judiciary,” passed May 12, 1847.

[So much of this act, as was not repealed by former acts, was repealed by L. 1880, ch. 245, except §§ 26, 33 and 35.]

Grand jurors. § 26. No more grand jurors shall be summoned in any year after one thousand eight hundred and forty-seven, in any county, to attend the court of sessions therein, than were required to be summoned yearly to attend the court of general sessions of such county by the laws in force on the twelfth of May, one thousand eight hundred and forty-seven; and when, in any county, a grand jury shall not by law be required to attend every term of the court of sessions, the county judge shall direct which terms of such courts a grand jury shall attend, by an order to be made and published, as provided by the twenty-sixth section of said chapter.

[Section 33 repealed by L. 1883, ch. 123.]

[Section 35 amends L. 1847, ch. 280, § 40, *ante*, and falls with the repeal of that section.]

L. 1848, Chap. 32—An act to amend an act entitled “An act authorizing courts of equity to order the sale of rights of pre-emption to real estate, or chattels real, in certain cases,” passed November 22d, 1847.

[Section 1 amends L. 1847, ch. 391, § 1.]

Notice how long to be published. § 2. The second section of said act is hereby amended so as to require the six months' notice therein provided for, in case of non-residents, to be published for three months successively twice in each week, in two of the daily papers published in the city of New York; still requiring, however, that six months shall expire after the first publication of the said notice, before the application to the court in said act referred to.

L. 1851, Chap. 163 — An act in relation to the powers of the late court of chancery and supreme court in equity in certain cases.

Assignor may not impeach assignment to receiver. SECTION 1. No person who has heretofore executed any assignment of any interest in any real estate to any receiver, in pursuance of any order of the late court of chancery or supreme court in equity, his heirs or assigns, nor any person claiming by, from, or under them or any of them, shall be permitted to question the validity of such assignment to said receiver or any sale or conveyance made by him, of the assigned property by reason of the want of any power or authority in either of those courts to make such order, or to direct such sale and conveyance, providing said courts shall have acquired jurisdiction of the persons and subject matter of the suit, and shall have proceeded according to the rules and practice of said courts.

Not to affect existing suits. § 2. This act shall not affect any suit or proceeding now pending in regard to any such assigned property, nor the title thereto of any purchaser in good faith for a valuable consideration.

L. 1853, Chap. 421 — An act to authorize the enrollment of decrees of the late court of chancery.

Order for enrollment. SECTION 1. The court of appeals, or any judge thereof, in term or vacation, shall have power, upon satisfactory proof that any final order or decree of the late court of chancery has not been properly enrolled, to make an order for the due enrollment thereof, or for an amendment of the enrollment thereof, to the same extent and with the like effect that the said court of chancery might have done.

L. 1870, Chap. 203 — An act relating to the court of appeals and the commission of appeals.

[Sections 1-7 are omitted as temporary.]

[Section 8 is on p. 557, *ante*.]

Powers and duties of clerk of court. § 9. All laws relating to the clerk of the court of appeals his powers and duties, shall be applicable to the clerk appointed under the Constitution, except so far as they may be inconsistent with the sixth article of the Constitution of this act.

L. 1870, Chap. 408 — An act relating to the supreme court and to the election of a judge of the court of common pleas in and for the city and county of New York.

[Sections 1-8, and §§ 10-14, were repealed by L. 1877, ch. 417.]

[Section 9 is on p. 558, *ante*.]

Provision as to actions referred and undetermined. § 15. In any action which was referred to a justice of the supreme court, and was pending and undetermined on the first day of January, eighteen hundred and seventy, and in which testimony had been taken, the supreme court, at a special term thereof, may in its discretion order the evidence so taken, and the proceedings had in such action, to stand, and have the same force and effect in the further prosecution of said action

or the defence thereof before the court, as if such evidence had been taken or proceedings had before the court.

[Section 16 is omitted as temporary.]

L. 1877, Chap. 11 — An act to extend the powers of county judges while in counties other than their own for the purpose of holding courts therein.

Powers and duties in other counties. SECTION 1. During the period that any county judge shall be in a county other than his own, for the purpose of holding courts therein, he may exercise all the powers and perform all the duties of the county judge of such other county, which said last-mentioned judge is by law authorized to exercise and perform out of court or in vacation; provided, however, that nothing herein contained shall empower him to perform the duties of surrogate in such other county.

94 N. Y., 387.

L. 1880, Chap. 480 — An act to amend chapter four hundred and sixty-seven of the laws of 1870, entitled "An act in relation to the county courts."*

Amendment. SECTION 1. Section one of chapter four hundred and sixty-seven of the laws of eighteen hundred and seventy, entitled "An act in relation to the county courts," is hereby amended so as to read as follows:

Courts to have jurisdiction in actions not to exceed \$3,000. § 1. The county courts, in addition to the powers they now possess, shall have jurisdiction in civil actions where the relief demanded is the recovery of a sum of money not exceeding three thousand dollars, or the recovery of personal property not exceeding in value three thousand dollars, and in which all the defendants are residents of the county in which the action is brought at the time of its commencement, subject to the right of the supreme court upon special motion, for good cause shown, to remove any such action into the supreme court before trial, and also, on such removal being made, to change the venue or place of trial. They shall have such appellate jurisdiction as is now provided by law.

28 Hun, 484.

[The section (L. 1870, ch. 467, § 1), amended as above, was repealed by L. 1877, ch. 417.]

L. 1838, Chap. 297 — An act in relation to the criminal courts in the city of New York.

Courts, where to be held. SECTION 1. It shall and may be lawful for the common council of the city of New York to assign such place in the said city, as may to them seem most conducive to the public convenience, for the holding of the courts of general or special sessions and of oyer and terminer and jail delivery, to be held in and for the said city and county. But such alteration of the place of holding such courts shall, before the same takes effect, be notified in one or more of the public newspapers printed in the said city, for the period of not less than four weeks.

* As to the constitutionality of this act, see Const., art. VI, § 15.

L. 1855, Chap. 337 — An act to enlarge the jurisdiction of the courts of general and special sessions of the peace, in and for the city and county of New York.

[Section 1 repealed by L. 1886, ch. 593.]

Application of laws. § 2. All the provisions of law whatsoever now existing, relating to courts of oyer and terminer, and regarding trials of indictments for capital offences, and for offences punishable by imprisonment in the state prison for life, and regarding sentences thereupon, and writs of error, bills of exceptions, *certioraris*, and writs of *habeas corpus*, arising upon trials of such indictments, are hereby applied to the said court of general sessions of the peace in and for the city and county of New York.

[Section 3 was repealed by L. 1886, ch. 593.]

Transfer of indictments. § 4. The court of oyer and terminer in and for the city and county of New York, may, by an order to be entered in its minutes, send all indictments for any crimes (including crimes punishable with death or imprisonment in the state prison for life) that may hereafter be in any way brought before the said court to the court of general sessions of the peace in and for the city and county of New York, to be there heard, tried and determined, according to law.

[Section 5 repealed by L. 1886, ch. 593.]

Contempts. § 6. The court of general sessions of the peace in and for the city and county of New York, shall have power at all times to make rules and regulations for its government and conduct, and to enforce the same by imprisonment for contempt, or by fine, or by both.

Fines. § 7. All fines imposed by the courts of oyer and terminer, and general and special sessions, in the city and county of New York, may be at any time remitted by the judge imposing the same, and in addition to such remissions, the court may, in its discretion, substitute imprisonment. All such fines shall be collected by and paid to the clerk of said courts, and by him accounted for to the chamberlain of said city and county of New York, with a statement under oath.

Repeal. § 8. All acts, statutes, parts of acts and parts of statutes, or provisions of law, conflicting with any of the provisions of this act, are hereby repealed.

L. 1874, Chap. 566 — An act in relation to the general interpreter of the criminal courts of the county of New York.

[Local.]

L. 1864, Chap. 510 — An act for the appointment of an interpreter in the courts of Kings county.

Appointment of interpreter; his duties; his compensation. SECTION 1. The board of supervisors of the county of Kings are authorized and empowered to designate and appoint some suitable person as interpreter, whose duty it shall be to attend the courts of record in said county, at which witnesses are sworn and testify, and who shall be paid the sum of twelve hundred dollars per annum, during the good behavior of the said interpreter. [Thus amended by L. 1869, ch. 249.]

L. 1876, Chap. 338 — An act to authorize the county judge of the county of Kings and the surrogate of said county to appoint an interpreter for their courts and to provide for his compensation therefor.

[Sections 1 and 2 were repealed by L. 1880, ch. 245.]

Salary. § 3. Such interpreter shall receive as compensation for his services, the sum of four dollars per day, for every day actually employed in said courts, to be certified to by the clerk of said courts respectively, and shall be paid monthly by the treasurer of the county of Kings.

L. 1881, Chap. 659 — An act in relation to the appointment and dismissal of court officers in each of the courts of record of Kings county, and to fix the salary of the official stenographer of the supreme court of said county.

Officers, appointment and removal of. SECTION 1. All court officers, other than those provided for by the Constitution, attendants or messengers, shall be appointed or removed at the pleasure of the judges of the courts of Kings county in which they shall be employed respectively.

Stenographer, salary of. § 2. The official stenographer of the supreme court of Kings county shall receive the sum of five thousand dollars per annum, to be raised with the annual tax levy as a county charge. He shall provide a stenographer for each trial term of the court, and the compensation of his assistants shall be paid by the said official stenographer. There shall be no other compensation allowed to him or his assistants as a county charge.

L. 1848, Chap. 58 — An act in relation to the seal of Broome county.

Seal to be used. SECTION 1. The seal of the county of Broome, as used by the clerk of said county, before the passage of the act entitled "An act in relation to the judiciary," passed May 12, 1847, shall continue to be the seal of the said county, to be used by the said clerk for the time being, for all purposes for which a county seal may be required; and the provisions of section seventy-two of said act, so far as relates to the seal of the supreme and circuit courts and the court of oyer and terminer of the counties, shall not be applicable to the county of Broome.

L. 1848, Chap. 210 — An act in relation to courts of record in Oswego county.

[Local.]

L. 1851, Chap. 232 — An act to authorize the clerk of Chautauque county to procure a new seal for said county.

County clerk may procure seal. SECTION 1. The county clerk of the county of Chautauque is hereby authorized to procure a new seal for said county, with such device as shall be approved by the county judge of said county, the same to be the seal of the supreme court in said county, and the seal of the circuit court and court of oyer and terminer and county courts of said county.

Description to be filed. § 2. Before using the said new seal, a description of the same shall be deposited on record in the office of the secretary of state, accompanied with a certificate of approval of the county judge of said county, which description shall remain of record.

Former seal to be destroyed. § 3. It shall be the duty of the county clerk of said county, before using the new seal to destroy the seal now in use.

L. 1865, Chap. 296—An act to amend an act entitled “An act to authorize the county judges of the several counties in this state to appoint a crier for the courts of record to be held in and for said counties,” passed April fourteenth, eighteen hundred and fifty-five.

[Section 1 was repealed by L. 1877, ch. 417.]

Supreme court crier to be appointed. § 2. The justices of the supreme court of the first judicial district, or a majority of them, are hereby authorized to appoint from time to time, as shall be necessary, a suitable person to discharge the duties of crier of the supreme court in the city and county of New York; such person to be paid such compensation and in such manner as the board of supervisors of said county shall determine.

L. 1877, Chap. 191—An act to authorize the appointment and provide for the compensation of a stenographer of the special terms of the supreme court held in the county of Westchester.

Authorizing appointment of a stenographer, etc.; compensation. SECTION 1. A justice of the supreme court holding a special term in the county of Westchester, may appoint, and at pleasure remove, a stenographer for such special term, who must attend and perform his duties as directed by the justice appointing him. The said justice shall fix the compensation of the stenographer so appointed and of any stenographer heretofore appointed by him for attending any special term of said court held in said county before the passage of this act

Payment of same provided for. § 2. The board of supervisors of said county shall annually levy and collect, as a county charge, the amount so fixed by said justice, in the same manner as other county charges are paid.

L. 1878, Chap. 21—An act authorizing the appointment of a person to perform clerical duties, in the supreme court in Kings county.

Appointment; oath of office; powers and duties. SECTION 1. The justices of the supreme court, residing in Kings county, are hereby authorized by an instrument in writing, to appoint and at pleasure remove a person to perform clerical duties, in the supreme court in Kings county. The person so appointed shall subscribe and file in the clerk's office the constitutional oath of office, and, in the absence of the county clerk of Kings county, shall possess all the powers and perform all the duties, in respect to the business of the supreme court, which shall be prescribed by the justices, or any justice thereof; and shall have power to employ all necessary assistance in the duties required of him.

Salary. § 2. The board of supervisors of Kings county shall fix the salary of the person so appointed and provide for the payment thereof, from the first day of September, eighteen hundred and seventy-seven, in monthly payments during his service. The sum so fixed as salary shall be in full for such service and for all clerical assistance furnished by him. The amount so fixed shall be a county charge, to be raised with the annual taxes of said county.

L. 1886, Chap. 401—An act to authorize the appointment of stenographers by the justices of the supreme court, holding special terms in the fourth judicial district, and to provide for the compensation of such stenographers.

Stenographers for special terms in fourth judicial district; duties. SECTION 1. Each of the justices of the supreme court assigned to hold special terms in the fourth judicial district, for the hearing of contested motions and the trial of issues of fact and law, may appoint and at pleasure remove a stenographer, who must attend and perform all such services as may be required of him in reporting, writing out, copying and otherwise assisting in all judicial proceedings before the justices appointing him, and also in transmitting papers to the county clerks' office in said district for filing and entry therein.

Salary and expenses, how fixed and paid; to be levied from the counties composing the district. §2. Each stenographer so appointed shall receive a salary fixed by said justice, not exceeding seven hundred and fifty dollars per annum, and also a reasonable sum for actual necessary expenses while travelling to and from said terms and while attending court, including stationery, and the same shall be payable by the comptroller in equal quarterly payments, upon the certificate of said justice. To provide the means for paying said salaries and expenses, each of said justices shall, on the first day of October, eighteen hundred and eighty-six, and annually thereafter, fix and transmit to the comptroller the amount thereof, and the comptroller shall on the first day of November, eighteen hundred and eighty-six, and in each and every year thereafter, fix and transmit to the clerk of each board of supervisors, in said district, a statement of the sum to be raised by the board of supervisors of each of the counties within said district, in accordance with the amount of taxable real and personal property in each of said counties, as shown by the last assessment-roll therein. Said board of supervisors must annually levy and cause to be collected, as a county charge, and paid over to the several county treasurers the several sums fixed by the comptroller, and such county treasurers shall pay over the sum so collected to the comptroller of the state for the payment of such salaries and expenses.

[Section 3 temporary.]

L. 1883, Chap. 215—An act fixing the salaries of the stenographers of the supreme court in the eighth judicial district.

Salaries of stenographers and fees for transcripts; their duties. SECTION 1. Each of the stenographers of the supreme court in the eighth judicial district whose appointment is provided for in section two hundred and fifty-eight of the Code of Civil Procedure shall receive a salary of two thousand dollars a year; the salaries to be paid as prescribed in section two hundred and fifty-nine of the Code of Civil Procedure, and such stenographers shall report and transcribe opinions for the justices of the supreme court, when required, without additional compensation, and shall within twenty days after notice by a party that he intends to appeal, make a case and exceptions or bill of exceptions in a criminal or civil action or that briefs are to be made or arguments prepared in an action tried before the court without a jury, file with the clerk of the county in which such trial took place a transcript of the minutes taken by him on such trial. The stenographer shall be entitled to six cents for each one hundred words of such transcript, which transcript shall be certified to by the justice holding the court at which the trial took place. Such sum shall be paid with the stenographer's salary in the manner prescribed in section two hundred and fifty-nine of the Code of Civil Procedure. [*Thus amended by L. 1888, ch. 554.*]

L. 1888, Chap. 242—An act to provide for the appointment of an officer to attend the special terms of the supreme court in the county of Erie and justices' chambers.

Appointment; powers; salary; sheriff not required to attend. SECTION 1. The justices of the supreme court of the eighth judicial district or a majority of them may appoint and at their pleasure remove, a court officer whose duties it shall be to attend at justices' chambers and at the special terms of the supreme court held in the county of Erie. Such officer shall possess the powers of officers designated by sheriffs to attend upon courts. He shall receive a salary of one thousand dollars a year, to be paid in equal monthly payments, by the treasurer of Erie county. The sheriff of said county shall not hereafter be required to attend or designate any officers to attend said court unless requested so to do by the justice presiding.

[NOTE TO THIS ARTICLE.—Other provisions for the appointment of stenographers, their duties, compensation, etc., will be found in the Code of Civil Procedure.]

CHAPTER IV.

[201-301]

OF ACTIONS AND THE TIMES OF COMMENCING THEM.

TITLE I.—OF ACTIONS, AND THEIR GENERAL DIVISIONS.

TITLE II.—OF THE TIME OF COMMENCING ACTIONS.

[Chapter 4 was wholly repealed by L. 1849, ch. 438, § 72.]

'302-345]

CHAPTER V.**OF SUITS RELATING TO REAL PROPERTY.**

- TITLE I.—OF THE ACTION OF EJECTMENT.**
**TITLE II.—PROCEEDINGS TO COMPEL THE DETERMINATION OF CLAIMS
TO REAL PROPERTY IN CERTAIN CASES.**
TITLE III.—OF THE PARTITION OF LANDS OWNED BY SEVERAL PERSONS.
TITLE IV.—OF THE WRIT OF NUISANCE.
TITLE V.—OF WASTE.
TITLE VI.—OF TRESPASS ON LANDS.
**TITLE VII.—GENERAL PROVISIONS CONCERNING ACTIONS RELATING TO
REAL PROPERTY.**
**TITLE VIII.—PROCEEDINGS TO DISCOVER THE DEATH OF PERSONS, UPON
WHOSE LIVES ANY PARTICULAR ESTATE MAY DEPEND.**

[So much of chapter 5, as had not been previously repealed, was repealed by L.
1880, ch. 245.]

CHAPTER VI.

[246-285]

**OF PROCEEDINGS IN PERSONAL ACTIONS BROUGHT
FOR THE RECOVERY OF ANY DEBT, OR FOR DAMAGES
ONLY.****TITLE I.—OF THE COMMENCEMENT OF SUITS AND THE PROCEEDINGS
THEREIN, UNTIL THE FORMING OF AN ISSUE OF FACT.****TITLE II.—OF PLEADINGS AND SET-OFFS.****TITLE III.—OF THE ASSESSMENT OF DAMAGES UPON DEFAULT.****TITLE IV.—OF JUDGMENTS.****TITLE V.—OF EXECUTIONS, AND THE DUTIES OF OFFICERS THEREON.****TITLE VI.—PROVISIONS CONCERNING CERTAIN PROCEEDINGS IN THE PRO-
GRESS OF AN ACTION AT LAW.**

[So much of this chapter, as had not been previously repealed, was repealed by L.
1830, ch. 245.]

TITLE 3.

[386]

CHAPTER VII.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE,
APPLICABLE TO PROCEEDINGS IN CIVIL CASES.

TITLE I.—OF THE ABATEMENT OF SUITS BY DEATH, MARRIAGE, OR OTHERWISE, AND OF THEIR REVIVAL.

[Repealed.]

TITLE II.—OF THE REMOVAL OF CAUSES BEFORE TRIAL OR JUDGMENT, FROM INFERIOR COURTS.

[Repealed.]

TITLE III.—OF EVIDENCE.

TITLE IV.—OF THE TRIAL OF ISSUES OF FACT.

[Repealed.]

TITLE V.—OF AMENDING PLEADINGS AND PROCEEDINGS.

[Repealed.]

TITLE VI.—OF THE POWERS AND DUTIES OF SHERIFFS, CORONERS AND OTHER OFFICERS, IN THE ARREST AND IMPRISONMENT OF PERSONS IN CIVIL ACTIONS; IN THE RETURN AND EXECUTION OF PROCESS; AND IN CERTAIN OTHER CASES.

TITLE I.

[387] *Of the Abatement of Suits by Death, Marriage, or otherwise, and of their Revival.*

[Repealed by L. 1877, ch. 417.]

[388-390]

TITLE II.

Of the Removal of Causes before Trial or Judgment, from inferior Courts.

[Repealed by L. 1877, ch. 417; except §§ 15 and 16, which were repealed by L. 1880, ch. 245.]

[391-403]

TITLE III.

Of Evidence.

ART. 1.—Of taking, conditionally, the testimony of witnesses within this state.

[Repealed by L. 1877, ch. 417.]

ART. 2.—Of taking the testimony of witnesses out of this state.

[Repealed by L. 1877, ch. 417.]

ART. 3.—Of affidavits taken, and other judicial proceedings had in other states and foreign countries.

[Repealed by L. 1877, ch. 417.]

ART. 4.—Of depositions taken in this state, to be used in courts of other states and countries.

[Repealed by L. 1877, ch. 417.]

ART. 5.—Of proceedings to perpetuate testimony.

[Repealed by L. 1877, ch. 417.]

ART. 6.—Of witnesses, their privileges, and compelling their attendance.

[Repealed by L. 1877, ch. 417.]

ART. 7.—Of documentary evidence, and the preservation thereof.

ART. 8.—Of the examination of witnesses, of certain rules of evidence, and of evidence in certain cases.

ART. 7.

ART. 9.—Of the administration of oaths and affirmations.
[Repealed.]

ARTICLE SEVENTH.

OF DOCUMENTARY EVIDENCE, AND THE PRESERVATION THEREOF.

Sbc. 56-62. [Repealed.]

63. Clerks, etc., to receive papers offered for safe keeping.
64. Papers, how to be endorsed, filed and kept.
65. Not to be delivered out, except in certain cases.
66. But open to public examination.
67. Certain officers to receive wills, for safe keeping.
68. Will how to be enclosed and endorsed; not to be opened, etc.
69. To whom will to be delivered.
70. Surrogate to open will on death of testator, etc.

[Sections 56-62 were repealed by L. 1877, ch. 417.]

[404]

§ 63. The clerk of every county in this state, and the register of deeds in the city and county of New York, upon being paid the fees allowed therefor by law, shall receive and deposit in their offices respectively, any deeds, conveyances, wills, or other papers or documents, which any person shall offer to them for that purpose; and shall give to such person a written receipt therefor.

Papers offered for safe keeping to be received.

§ 64. Such instruments, papers and documents, shall be properly endorsed, so as to indicate their general nature and the names of the parties thereto, shall be filed by the officer receiving the same, stating the time when received, and shall be deposited and kept by him and his successor in office, with his official papers, in some place separate and distinct from such papers.

How to be endorsed and kept.

§ 65. The instruments, papers and documents so received and deposited, shall not be withdrawn from such office, except on the order of some court of record, for the purpose of being read in evidence in such court, and then to be returned to such office; nor shall they be delivered without such order, to any person, unless upon the written order of the person or persons who deposited the same, or their executors or administrators.

Not to be delivered out, &c.

§ 66. Such instruments, papers and documents so deposited, shall be open to the examination of any person desiring the same, upon payment of the fees allowed by law.

May be examined publicly.

§ 67. The clerk of every county in this state, the register of deeds in the city and county of New York, and the surrogate of every county, upon being paid the fees allowed therefor by law, shall receive and deposit in their offices respectively, any last will or testament which any person shall deliver to them for that purpose, and shall give a written receipt therefor to the person depositing the same.

Wills to be received for safe keeping.

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§ 68. Such will shall be enclosed in a sealed wrapper, so that the contents thereof cannot be read, and shall have endorsed thereon the name of the testator, his place of residence, and the day, month and year when delivered; and shall not, on any pretext whatever, be opened, read or examined, until delivered to a person entitled to the same, as herein after directed.

Will to be sealed up, &c.

TITLE 8.
To whom
to be deliv-
ered.

§ 69. Such will shall be delivered only,

1. To the testator in person: or,
2. Upon his written order, duly proved by the oath of a subscribing witness: or,
3. After his death, to the persons named in the endorsement on the wrapper of such will, if any such endorsement be made thereon: or,
4. If there be no such endorsement, and if the same shall have been deposited with any other officer than a surrogate, then to the surrogate of the county.

Will, when
to be
opened by
surrogate,
&c.

§ 70. If such will shall have been deposited with a surrogate, or shall have been delivered to him as above prescribed, such surrogate, after the death of the testator, shall publicly open and examine the same, and make known the contents thereof, and shall file the same in his office, there to remain until it shall have been duly proved, if capable of proof, and then to be delivered to the person entitled to the custody thereof; or until required by the authority of some competent court to produce the same in such court.

[406, 407]

L. 1877, Chap. 311—An act in relation to corporations or joint-stock companies of other states, territories, or dominion of Canada.

Evidence of corporate existence of foreign corporations. SECTION 1. Whenever, by the laws of any other state or territory, or the dominion of Canada, a copy of the certificate of organization or incorporation or any other certificate, certified or exemplified by any officer or officers in such state or territory or dominion, is, or shall be prima facie evidence of the due formation, creation, existence, organization or capacity of any corporation or joint-stock company, created, organized or located in such state, territory or dominion, or claiming so to be, such certificate or certificates, duly exemplified, or a duly exemplified copy thereof, shall be received in all actions and proceedings in this state, in or before all courts and officers, with the same force and effect in all respects as prima facie evidence as aforesaid, as in such other state, territory or dominion.

L. 1877, Chap. 319—An act making certified copies of records in the offices of the comptroller of the state of New York and the treasurer of the state of New York evidence in the courts of this state.

Evidence. SECTION 1. Copies of all the official records in the offices of the comptroller and treasurer of this state, certified by the officer in whose office they are kept, shall in all cases be evidence equally and in like manner as the originals.

L. 1878, Chap. 219—An act in relation to evidence in civil and criminal cases.

Evidence of acts, ordinances, &c., of municipal corporations. SECTION 1. Any act, ordinance, resolution, by-law, rule or proceeding of the common council of a city, or any of the board of trustees of an incorporated village, or of a board of supervisors of county within this state, and any recital of occurrences taking place at the sessions of any thereof, may be read in evidence on any trial, examination or proceeding, whether civil or criminal, either from a copy thereof certified by the

clerk of the city, village, common council or board of supervisors, or from a volume printed by authority of the common council of the city or board of supervisors of the county, or of the board of trustees of any incorporated village. [*Thus amended by L. 1879, ch. 211.*]

Printed volume to be received in evidence when certified. § 2. Whenever the proceedings of the board of supervisors of any county are printed in a volume by authority of the board of supervisors; the volume so printed, and duly certified by the chairman and clerk of the said board of supervisors to be a true record of such proceedings, shall be and constitute the book of records of the said board. [*Thus amended by L. 1884, ch. 327.*]

L. 1880, Chap. 135 — An act to simplify the proof of the Sanitary Code in the city of New York.

"Sanitary Code" defined; how to be proved. SECTION 1. The Sanitary Code adopted and declared as such at a meeting of the board of health of the health department of the city of New York, held in the city on the second day of June, one thousand eight hundred and seventy-three, is hereby declared to be the Sanitary Code mentioned and described in section eighty-two of an act entitled "An act to reorganize the local government of the city of New York," passed April thirtieth, eighteen hundred and seventy-three, and in all courts of justice or judicial proceedings proof of the said Sanitary Code, and of the proceedings of such board of health in relation thereto, by the production of the book of minutes of such meeting held as aforesaid, or a transcript of the record of such proceedings duly authenticated by the secretary of said board of health, shall be held and taken as complete and valid evidence of the said Sanitary Code, its due adoption, enactment and publication, and such Sanitary Code shall be deemed in full force and operative in the city of New York, save as duly modified or repealed by the said board of health.

ARTICLE EIGHTH.

OF THE EXAMINATION OF WITNESSES, OF CERTAIN RULES OF EVIDENCE, AND OF EVIDENCE IN CERTAIN CASES.

[This entire article repealed by L. 1887, ch. 417, and L. 1880, ch. 245.]

Subsequent acts on this subject.

L. 1880, Chap. 36 — An act to amend the law of evidence and practice on civil and criminal trials.

Comparison of disputed writings. SECTION 1. Comparison of a disputed writing, with any writing proved to the satisfaction of the court to be genuine, shall be permitted to be made by witnesses in all trials and proceedings, and such writings and the evidence of witnesses respecting the same may be submitted to the court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

28 Hun, 408; 95 N. Y., 73; 42 Hun, 270.

The same. § 2. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be the genuine handwriting of any person, claimed on the trial to have made or executed the disputed instrument, or writing, shall be permitted and submitted to the court and jury in like manner. But nothing within contained shall affect or apply to any action or proceeding heretofore commenced or now pending. [*This section added by L. 1888, ch. 555.*]

L. 1882, Chap. 340—An act relating to the proof of age of children.

Age how to be determined. SECTION 1. Whenever in any proceeding or trial it becomes necessary to determine the age of a child, such child may be produced and exhibited to enable the magistrate, court or jury to determine its age by a personal inspection; and such court or magistrate may direct an examination by one or more physicians, whose opinion shall also be competent evidence upon the question of such age.

L. 1883, Chap. 88—An act to enable courts of justice to receive in evidence in actions or proceedings involving a question as to the situs of any lot of the common lands, so called, in the city of New York, certain evidence heretofore received in causes involving such a question.

Evidence in certain former suits to be received. SECTION 1. In any pending or future action or proceeding involving a question as to the situs of any lot of the common lands, so called, in the city of New York, the court may, upon the offer of any party, receive in evidence any evidence which was received in the action heretofore prosecuted in the superior court of the city of New York, by Russell D. Miner, and continued by the personal representatives of the said Russell D. Miner, deceased, against the mayor, aldermen and commonalty of the city of New York, or in the action in said court between certain heirs-at-law of the said Russell D. Miner, deceased, and Jacob Scholle and others, and also the deposition of Isaac T. Ludlam, deceased, verified before E. Henry Lacombe, as referee, upon the fourteenth day of November, eighteen hundred and seventy-eight, in an action in the said court by Hester Sherman and others, against Thomas Kane and others; provided that the testimony of a witness shall not be admissible, under the provisions of this act, until the court is satisfied that such witness has heretofore died; and provided further, that no provision of this act shall give to any documentary evidence introduced in connection with any former testimony any greater or different effect than may be due to it by reason of the testimony relative thereto.

How to be introduced. § 2. Such evidence may be introduced, as before provided, in any mode established by the practice of the courts for the introduction of testimony given upon a former trial, by a witness who has since died, or by reading from the printed cases on appeal, heretofore filed in the office of the clerk of the superior court of the city of New York.

L. 1883, Chap. 195—An act relating to the proof of instruments in writing.

Subscribing witness need not be called. SECTION 1. Except in the case of written instruments to the validity of which a subscribing witness, or subscribing witnesses, is, or are necessary, whenever, upon the trial of any action, civil or criminal, or upon the hearing of any judicial proceeding, a written instrument is offered in evidence, to which there is a subscribing witness, it shall not be necessary to call such subscribing witness, but such instrument may be proved in the same manner as it might be proved if there were no subscribing witness thereto.

L. 1884, Chap. 376—An act relating to proof of payments made by or in behalf of municipal corporations in this state.

Payment may be proved by receipt of officer. SECTION 1. In any action or proceeding now pending or hereafter to be brought in any of the courts of this state, the payment of any sum of money by a municipal corporation, or an officer thereof, may be proved by a receipt purporting upon its face to be given therefor, and

to entitle such receipt to be read in evidence, no further or other proof shall be necessary than that it is produced from the files of the office of the chief financial officer of such municipal corporation, or from the files of the office of the person or department charged with the duty of making the payment. Every such receipt so read in evidence shall be presumptive proof of the fact of the payment to the person by or in whose behalf it purports to be signed of the sum of money and for the purpose therein expressed. But no such receipt shall be entitled to be read in evidence by virtue of the provisions of this act, unless it was given at least six years before the commencement of the action or proceeding in which it shall be offered as evidence. And the date or time appearing upon its face shall be presumptive proof that it was given at such date or time.

Proof not conclusive. § 2. Nothing in this act contained shall be held to prevent any party to such an action or proceeding from proving affirmatively that the payment so appearing to have been made has not in fact been made.

ARTICLE NINTH.

OF THE ADMINISTRATION OF OATHS AND AFFIRMATIONS.

[Repealed by L. 1887, ch. 417.]

TITLE IV.

Of the Trial of Issues of Fact.

TITLE 4.

[408-433]

[The entire title was repealed by L. 1877, ch. 417.]

TITLE V.

Of amending Pleadings and Proceedings.

TITLE 5.

[434, 435]

[The entire title was repealed by L. 1877, ch. 417.]

TITLE VI.

Of the Powers and Duties of Sheriffs, Coroners and other Officers, in the Arrest and Imprisonment of Persons in civil Actions; in the Return and Execution of Process; and in certain other Cases.

TITLE 6.

[436-443]

ART. 1.—Of the arrest of persons on civil process.

ART. 2.—Of the imprisonment of persons arrested on civil process.

ART. 3.—Of the liberties of jails, and admitting prisoners thereto.

ART. 4.—Of escapes, and the liabilities of sheriffs therefor.

ART. 5.—Proceedings on the election or appointment of a new sheriff

ART. 6.—Of the duties of sheriffs, in the execution and return of process.

ART. 7.—Proceedings in case of resistance to the execution of process.

ART. 8.—Provisions concerning the duties of coroners in executing civil process, in cases where sheriffs are parties.

ART. 9.—Provisions concerning persons committed under the authority of courts of the United States, to jails within this state.

[This entire title was repealed by L. 1877, ch. 417.]

L. 1884, Chap. 228—An act to enable taxpayers to make application for the discharge of judgment debtors from imprisonment.

Discharge of prisoner when court may order, on taxpayer's application. SECTION 1. When a person has been arrested by virtue of an execution issued upon a judgment of fifty dollars or under, and has been kept imprisoned at the expense of the county for six months or over, the court out of which the execution issued may, on the application of a taxpayer of the county to which the support is chargeable, and upon due proof of the service upon the person in whose favor such execution was issued, of a notice in writing of the time when and the place where such application is to be made, at least eight days before the making thereof discharge the prisoner, and it shall be the duty of the sheriff to forthwith release him from custody.

CHAPTER VIII.

OF PROCEEDINGS IN SPECIAL CASES.

[444]

TITLE I.—OF THE BRINGING AND MAINTAINING OF SUITS BY POOR PERSONS.

[Repealed.]

TITLE II.—PROCEEDINGS BY AND AGAINST INFANTS.

[Repealed.]

TITLE III.—OF SUITS BY AND AGAINST EXECUTORS AND ADMINISTRATORS, AND AGAINST HEIRS, DEVISEES AND LEGATEES.

TITLE IV.—OF PROCEEDINGS BY AND AGAINST CORPORATIONS, AND PUBLIC BODIES HAVING CERTAIN CORPORATE POWERS, AND BY AND AGAINST OFFICERS REPRESENTING THEM.

TITLE V.—OF SUITS AGAINST SHERIFFS, SURROGATES AND OTHER OFFICERS, ON THEIR OFFICIAL BONDS.

[Repealed.]

TITLE VI.—OF ACTIONS FOR PENALTIES AND FORFEITURES; AND PROVISIONS FOR THE COLLECTION AND REMISSION OF FORFEITED RECOGNIZANCES, AND FINES IMPOSED BY COURTS.

[Repealed.]

TITLE VII.—OF PROCEEDINGS FOR THE ADMEASUREMENT OF DOWER.

[Repealed.]

TITLE VIII.—OF PROCEEDINGS FOR THE COLLECTION OF DEMANDS AGAINST SHIPS AND VESSELS.

[Repealed.]

[Supplementary Title.

TITLE 8^A.—Mechanics' and laborers' liens on real property.]

TITLE IX.—OF PROCEEDINGS FOR THE RECOVERY OF RENT AND OF DEMISED PREMISES.

[Repealed.]

TITLE X.—SUMMARY PROCEEDINGS TO RECOVER THE POSSESSION OF LAND IN CERTAIN CASES.

[Repealed.]

TITLE XI.—OF DISTRAINING CATTLE AND OTHER CHATTELS DOING DAMAGE, AND OF DISTRAINING IN OTHER CASES.

TITLE XII.—OF THE ACTION OF REPLEVIN.

[Repealed.]

TITLE XIII.—OF PROCEEDINGS, AS FOR CONTEMPTS, TO ENFORCE CIVIL REMEDIES, AND TO PROTECT THE RIGHTS OF PARTIES IN CIVIL ACTIONS.

[Repealed.]

TITLE XIV.—OF ARBITRATIONS.

[Repealed.]

TITLE XV.—OF THE FORECLOSURE OF MORTGAGES BY ADVERTISEMENT.

[Repealed.]

TITLE XVI.—OF PROCEEDINGS FOR THE DRAINING OF SWAMPS, MARSHES,

AND OTHER LOW LANDS.

TITLE XVII.—GENERAL MISCELLANEOUS PROVISIONS CONCERNING SUITS AND PROCEEDINGS IN CIVIL CASES.

TITLE 1.

[444]

TITLE I.

Of the bringing and maintaining of Suits by poor Persons.

[This entire title was repealed by L. 1877, ch. 417.]

TITLE 2.

[445, 446,

TITLE II.

Proceedings by and against Infants.

[This entire title was repealed by L. 1877, ch. 417.]

L. 1872, Chap. 524 — An act to protect purchasers on sales of real estate of infants, by special guardian, prior to January 1st, 1852.

Certain sales of infants' real estate ratified and confirmed. SECTION 1. All sales of real estate belonging to infant owners, made by special guardians under the orders of the supreme court, county court or late court of chancery, prior to January first, eighteen hundred and fifty-two, and the conveyances therefor executed by said special guardian, are hereby ratified and confirmed, notwithstanding the omission by any such special guardian, to affix to his or her signature, his or her title as special guardian, or to sign the name of the infant or infants whose real estate was thus conveyed to such deed of conveyances: provided, that the person who executed such conveyance was the duly appointed special guardian of such infant or infants, and such conveyance was in other respects executed in conformity to the order of the court in which the proceedings for such sale were had.

Not to affect existing suits and proceedings. § 2. This act shall not affect the right of any party to any suit or legal proceeding, commenced before the passage thereof, in consequence of the irregularity of any proceeding, or the invalidity of any deed which by the foregoing section is legalized and made valid.

TITLE 3.

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TITLE III.

Of Suits by and against Executors and Administrators, and against Heirs, Devisees and Legatees.

ART. 1.—Of suits by and against executors and administrators.

ART. 2.—Of suits by and against legatees, and against next of kin, heirs and devisees, and between heirs and devisees.

ARTICLE FIRST.

.OF SUITS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

- SEC. 1. Actions for wrongs may be brought by and against executors, etc.
 2. Certain actions excepted from last section.
 3-10. [Repealed.]
 11. Executors of executors, not to have any rights as such.
 12-16. [Repealed.]
 17. Executors of their own wrong abolished; liable as trespassers.
 18. Rights, etc., of administrators de bonis non.

SECTION 1. For wrongs done to the property, rights or interests of another, for which an action might be maintained against the wrong-doer, such action may be brought by the person injured, or after his death, by his executors or administrators, against such wrong-doer, and after his death against his executors or administrators, in the same manner and with the like effect in all respects, as actions founded upon contracts.

ART. 1.
Actions for
wrongs.

5 Abb., N. S., 362; 4 Hun, 49; 13 Id., 302; 3 Hun, 632; 3 T. & C., 63; 1 Barb., 673; 41 How. Pr. R., 513; 52 N. Y., 75; 36 N. Y., 625; 4 Abb. Ct. App. Dec., 26; 2 Hun, 608; 65 Barb., 338; 58 Barb., 335; 13 Abb., N. S., 239; 16 Abb., N. S., 104; 48 How. Pr. R., 144; 16 Hun, 177; 13 J. & S., 26; 8 J. & S., 453; 16 Hun, 369; 19 N. Y., 474; 28 Barb., 607; 6 Barb., 330; 2 Barb., 373; 1 Barb., 230; Hill & Denio, 119; 16 How. Pr. R., 16, 279, 378; 5 Wend., 813; 5 Denio, 477; 1 Johns. R., 336; 38 Barb., 20; 25 How. Pr. R., 236; 31 Hun, 359; 32 Hun, 141; 34 Hun, 12, 273; 24 Hun, 204, 620; 37 Hun, 136, 194; 96 N. Y., 333; 103 N. Y., 429; 104 N. Y., 613.

§ 2. But the preceding section shall not extend to actions for slander, for libel, or to actions of assault and battery, or false imprisonment, nor to actions on the case for injuries to the person of the plaintiff, or to the person of the testator or intestate of any executor or administrator.

[448]
Excep-
tions.

4 Hun, 49; 19 N. Y., 474; 25 How. Pr. R., 236; 52 N. Y., 75, 76; 58 Barb., 335; 3 Hun, 632; 11 Hun, 239; 5 Hun, 200; 54 How. Pr., R., 313; 34 Hun, 273; 99 N. Y., 361; 104 N. Y., 613.

[Sections 3-7 were repealed by L. 1880, ch. 245.]

[Section 8 was repealed by L. 1877, ch. 417.]

[Sections 9 and 10 were repealed by L. 1880, ch. 245.]

§ 11. An executor of an executor, shall have no authority to commence or maintain any action or proceeding relating to the estate, effects or rights of the testator of the first executor, or to take any charge or control thereof, as such executor.

Executors
of execu-
tors.

[449]
19 Barb.,
653; 13
Barb., 370;

5 Page, 36; 2 Dem., 203; 44 Hun, 460.

[Sections 12-16 were repealed by L. 1880, ch. 245.]

§ 17. No person shall be liable to an action as executor of his own wrong, for having received, taken or interfered with the property or effects of a deceased person; but shall be responsible as a wrong-doer in the proper action to the executors, or general or special administrators, of such deceased person, for the value of any property or effects so taken or received, and for all damages caused by his acts, to the estate of the deceased.

Executors
of their
own
wrong.

16 N. Y.,
336; 9 N. Y.,
149; 16
Barb., 544;
6 Barb.,
429; 2
Barb., 172;
3 Barb. Ch.,
27 Hun, 511.

479; 2 Hill, 185, 326; 3 T. & C., 448; 13 J. & S., 234; 37 Hun, 632; 26 Hun, 235;

§ 18. When administration of the effects of a deceased person, which shall have been left unadministered by any previous executor or administrator of the same estate, shall be granted to any person, such person may bring a writ of error upon any judgment obtained against such previous executor or administrator of the same estate, or against the original testator or intestate; and shall defend any writ of error brought upon any such judgment; and shall have the same remedies, in the prosecution or defence of any action, by or against such previous executors or administrators, and for the collection and enforcing of any judgment obtained by them, as they would have by law.

Rights,
&c., of ad-
ministra-
tors de
bonis non.
[450]

16 N. Y., 83; 19 Barb., 631; 11 Barb., 546; 5 Paige, 254; 5 Denio, 449; 4 Denio, 85; 1 Denio, 628; 2 Hill, 181; 1 Hill, 615; 13 Wend., 591; 5 Wend., 224, 313; 3 Wend., 306; 2 Johns. R., 237; 6 Johns. Ch. R., 398; 3 Johns. Ch. R., 578; 3 Abb. Pr., 432; 4 E. D. Smith, 519.

[1 R. L., 312, § 9.]

TITLE 4.

[451-456]

ARTICLE SECOND.

OF SUITS BY AND AGAINST LEGATEES, AND AGAINST NEXT OF KIN, HEIRS AND DEVISEES,
AND BETWEEN HEIRS AND DEVISEES.

[This article was repealed by L. 1880, ch. 245.]

[457-460]

TITLE IV.

Of Proceedings by and against Corporations, and public Bodies having certain corporate Powers, and by and against Officers representing them.

ART. 1.—Of proceedings by and against corporations, in courts of law.

[Repealed.]

ART. 2.—Of proceedings against corporations, in equity.

ART. 3.—Of the voluntary dissolution of corporations.

ART. 4.—Of proceedings by and against public bodies, having certain corporate powers, and by and against the officers representing them.

ARTICLE FIRST.

OF PROCEEDINGS AGAINST CORPORATIONS, IN COURTS OF LAW.

[This article was repealed by L. 1877, ch. 417, and L. 1880, ch. 245.]

[461-463]

ARTICLE SECOND.

OF PROCEEDINGS AGAINST CORPORATIONS IN EQUITY.

SEC. 31-41. [Repealed.]

42. Receivers' general powers and duties.

43-57. [Repealed.]

[464]

[Sections 31-41 were repealed by L. 1880, ch. 245.]

Receivers,
general
powers
and duties.
45 N. Y.,
515; 1 N. Y.,
333; 23
Barb., 656;
1 Barb., 148;
6 Paige,
217, 226, 508;
4 Paige,
225; 2
Paige, 452;
2 Sandf.
Ch., 257;
25 Hun, 376,
512; 90 N.
Y., 7.

§ 42. Such receiver shall possess all the power and authority conferred, and be subject to all the obligations and duties imposed, in article three of this title, upon receivers appointed in case of the voluntary dissolution of a corporation. It shall be his duty to keep an account of all moneys received by him, and on the first days of January, April, July and October, in each and every year, to make and file a written statement, verified by his oath that such statement is correct and true, showing the amount of money received by such receiver, his agents or attorneys, the amount he has a right to retain under the provisions of this title, and the items for which he claims to retain the same, and the distributive share due each person interested therein. He shall pay such distributive share to the person or persons entitled thereto, on demand, at any time after such statement. Such account, statement, and all the books and papers of the corporation in the hands of such receiver, shall at all reasonable times be open for the inspection of all persons having an interest therein. And in case of neglect or refusal to comply with either of the above requirements, or any duty imposed upon him by this title, the supreme court, at either a general or special term, shall, on the application of the party aggrieved, unless such neglect or refusal

shall be satisfactorily explained to the court, forthwith remove such receiver, and appoint some suitable person as receiver in his place. Such removal shall not vitiate or annul any legal proceedings had by such receiver; but such proceedings shall be continued by such successor as if no removal had been made. Such receiver shall also be liable to pay to the party interested, interest at the rate of ten per cent per annum on all moneys due to such party and retained by him more than one day after such demand made as aforesaid. ART. 2.
[Thus amended by L. 1858, ch. 348, and saved by the repealing act of 1880, which declares the section "applicable to a permanent receiver appointed as prescribed in § 1788 of the Code of Civil Procedure."]

[Sections 43-57 were repealed by L. 1880, ch. 245.]

[465]

L. 1842, Chap. 222 — An act respecting receivers appointed by the bank commissioners under the act entitled "An act respecting the appointment of receivers of moneyed institutions," passed April 27, 1841.

Receivers subject to orders of supreme court. SECTION 1. That all the receivers heretofore appointed by the bank commissioners, under the act entitled "An act respecting the appointment of receivers of moneyed institutions," passed April 27, 1841, shall be subject to all the provisions of law applicable to receivers of moneyed institutions appointed by the chancellor previous to the passage of the last named act, and shall be accountable to, and under the direction of the chancellor, in relation to all their powers and duties, and the property and effects that has or shall come into their hands as such receivers, in the same manner and to the same extent as they would have been had they been appointed by the chancellor. It shall be the duty of the chancellor, from time to time, to make such orders and give such directions to such receiver in relation to the property and effects in their hands, or hereafter to come into their hands, as he shall deem most beneficial to the creditors of such moneyed institutions; and the chancellor shall have power, at any time to remove any such receiver, and to appoint others, for neglect of duty or official misconduct, in the same manner and with the like power that he now has over receivers appointed by himself, and not otherwise.

L. 1852, Chap. 71 — An act to facilitate the collection of debts against corporations.

[Section 1 was repealed by L. 1880, ch. 245.]

Receivers to make assessments on premium notes; notice of assessment to be given. § 2. In case the corporation, in regard to which a receiver has been or shall hereafter be appointed, is or shall be a mutual insurance company, such receiver shall have full power under the authority and sanction of the court appointing him, to make all such assessments on the premium notes belonging to such corporation, as may be necessary to pay the debts of such corporation, as by the charter thereof the directors of such corporation have authority to make; and the notice of such assessment may be given in the same manner as is provided in the charter of said company for the directors of said company to give; and the said receiver shall have the like rights and remedies, upon and in consequence of the non-payment of such assessments, as are given to the corporation or the directors thereof by the charter of such corporation.

25 Barb., 113; 26 N. Y., 243; 25 How. Pr. R., 88.

Surrender of policies. § 3. Such receiver is authorized to receive a voluntary surrender of all policies issued by such corporation, or to cancel the policies issued by such corporation, in all cases where by the charter of such corporation, the directors thereof are authorized to receive the surrender of, or cancel the policies issued by such corporation.

Receiver to examine acts of corporation. § 4. The court by which any such receiver may have been or shall be appointed, is authorized upon a proper action, instituted for that purpose by such receiver, to examine by a reference or otherwise, as it may deem proper into the proceedings and acts of such corporation; and if it shall appear upon such examination, that the directors or officers of such corporation, or either or any of them, have in any manner misapplied, or improperly disposed of the funds, property or effects of such corporation, it shall be lawful for such court to decree that such directors or officers of such corporation, as shall have been guilty of such misapplication or improper disposition of such funds, property or effects, to pay the same to such receiver, and to enforce such decree, by such process, as may be necessary to accomplish that object.

L. 1880, Chap. 537—An act in relation to receivers of insolvent corporations.

Copy report to be served on attorney-general. SECTION 1. All receivers of insolvent corporations who are now required by law to make and file reports of their proceedings shall hereafter, at the time of making and filing such reports, serve a copy thereof upon the attorney-general of this state, and receivers of such corporations as reported to, and were under the supervision of, the banking department, prior to their appointment as such receivers, and who have not been discharged from their respective trusts, and all receivers of such corporations, that may hereafter be appointed, shall on the first day of January and July of each year, during the continuance of their respective trusts, file with the superintendent of the banking department a report, verified by oath, in such form as the superintendent may prescribe, showing the condition of their respective trusts. [*Thus amended by L. 1881, ch. 639.*]

25 Hun, 376.

Motion by attorney-general to compel making report, etc. § 2. In case any receiver of an insolvent corporation shall neglect to make and file a report of his proceedings for thirty days after the time he is now required by law to make and file such report, or shall neglect for the same length of time to serve a copy thereof on the attorney-general, as required by the first section of this act, the attorney-general may make a motion in the supreme court for an order to compel the making and filing and serving a copy on him of such report, or for the removal of such receiver from his office.

Attorney-general may move for order removing receiver, etc. § 3. The attorney-general may, at any time he deems that the interests of the stockholders, creditors, policy-holders, depositors or other beneficiaries interested in the proper and speedy distribution of the assets of any insolvent corporation will be subserved thereby, make a motion in the supreme court at a special term thereof, in any judicial district, for an order removing the receiver of any insolvent corporation, and appointing a receiver thereof in his stead, or to compel him to account, or for such other or additional order or orders as to him may seem proper to facilitate the closing up of the affairs of such receivership, and any appeal from any order made upon any motion under this section shall be to the general term of said court of the department in which such motion is made. [*Thus amended by L. 1882, ch. 331, § 1.*]

25 Hun, 509.

Notices, etc., must be served on attorney-general. § 4. A copy of all notices of motion and of all motion papers, and a copy of any other application to the court, together

with a copy of the order or judgment to be proposed thereon to the court, in every action or proceeding now pending for the dissolution of a corporation or a distribution of its assets, or which shall hereafter be commenced for such purpose, shall in all cases be served on the attorney-general, in the same manner as provided by law for the service of papers on attorneys who have appeared in actions, whether the applications but for this law would be *ex parte* or upon notice, and no order or judgment granted shall vary in any material respect from the relief specified in such copy, order or judgment, unless the attorney-general shall appear on the return day and have been heard in relation thereto; and any order or judgment granted in any action or proceeding aforesaid without such service of such papers upon the attorney-general, shall be void, and no receiver of any such corporation shall pay to any person any money directed to be paid by any order or judgment made in any such action or proceeding, until the expiration of eight days after a certified copy of such order or judgment shall have been served as aforesaid upon the attorney-general. [*Thus amended by L. 1882, ch. 331, § 2.*]

[L. 1882, ch. 331, § 3. The provisions of this act shall only apply to actions and special proceedings heretofore instituted by the attorney-general and to such as shall hereafter be instituted by him for the purposes aforesaid.]

L. 1883, Chap. 378 — An act in relation to receivers of corporations.

Where application for appointment of a receiver to be made. SECTION 1. Every application hereafter made for the appointment of a receiver of a corporation shall be made at a special term of the court held in and for the judicial district in which the principal business office of the corporation was located at the commencement of the action wherein such receiver is appointed or in and for a county adjoining such district; and any order appointing a receiver, otherwise made, shall be void.

35 Hun, 341.

Compensation of receivers; division in certain cases. § 2. Every receiver shall be allowed to receive, as compensation for his services as such receiver, five per centum for the first one hundred thousand dollars received and paid out, and two and a half per centum on all sums received and paid out in excess of the said one hundred thousand dollars. But no receiver shall be allowed or shall receive, from such percentages or otherwise, for his said services for any one year, any greater sum or compensation than twelve thousand dollars, nor for any period less than one year more than at the rate of twelve thousand dollars per year, provided that where more than one receiver shall be appointed, the compensation herein provided shall be divided between such receivers. [*Thus amended by L. 1886, ch. 275.*]

65 How. Pr., 442; 25 Hun, 594; 31 Hun, 86; 32 Hun, 78, 171, 223; 35 Hun, 342; 38 Hun, 140; 39 Hun, 50; 40 Hun, 58; 37 Hun, 523; 89 N. Y., 94; 93 N. Y., 631; 94 N. Y., 587; 101 N. Y., 478.

Order to designate place of deposit. § 3. All orders appointing receivers of corporations shall designate therein one or more places of deposit, wherein all funds of the corporation not needed for immediate disbursement shall be deposited, and no deposits or investments of such trust funds shall be made elsewhere, except upon the order of the court upon due notice given to the attorney-general.

Receiver to report in detail receipts and expenses every six months. § 4. It shall be the duty of every receiver of an insurance, banking or railroad corporation, or trust company, to present every six months to the special term of the supreme court, held in the judicial district wherein the place of trial or venue of the action or special proceeding in which he was appointed may then be, on the first day of its first sitting, after the expiration of such six months, and to file a copy of the same, if a receiver of a bank or trust company, with the bank superintendent, if a receiver of an insurance company, with the superintendent of insurance, and in each case with the attorney-general, an account exhibiting in detail

the receipts of his trust, and the expenses paid and incurred therein during the preceding six months; and it shall be unlawful for any receiver of the character specified in this section to pay to any attorney or counsel any costs, fees or allowances until the amounts thereof shall have been stated to the special term in this manner, as expenses incurred, and shall have been approved by that court, by an order of the court duly entered; and any such order shall be the subject of review by the general term and the court of appeals on an appeal taken therefrom by any party aggrieved thereby. Of the intention to present such account, as aforesaid, the attorney-general shall be given eight days' notice in writing; and the attorney-general shall examine the books and accounts of such receiver at least once every twelve months. [*Thus amended by L. 1885, ch. 40.*]

18 W. D., 492; 31 Hun, 623.

Intervenors to pay their own expenses. § 5. In case of the intervention of any policy-holder or depositor, by permission of the court, such policy-holder or depositor shall defray the legal expenses thereof, and no allowance shall be made for costs or fees to any attorney of such policy-holder or depositor.

Affairs to be closed up within one year. § 6. The affairs of every insolvent corporation now in the hands of any receiver shall be fully closed up by the receiver thereof within one year from the passage of this act, unless the court, upon application by said receiver and upon due notice to the attorney-general, shall give additional time for that purpose.

Attorney-general may apply to have receiver removed, etc. § 7. The attorney-general may, at any time he deems that the interests of the stockholders, creditors, policy-holders, depositors or other beneficiaries interested in the proper and speedy distribution of the assets of any insolvent corporation will be subserved thereby, make a motion in the supreme court at a special term thereof, in any judicial district, for an order removing the receiver of any insolvent corporation and appointing a receiver thereof in his stead, or to compel him to account, or for such other and additional order or orders as to him may seem proper to facilitate the closing up of the affairs of such receivership, and any appeal from any order made upon any motion under this section shall be to the general term of said court of the department in which such motion is made.

Copies of all papers to be served on attorney-general. § 8. A copy of all motions and all motion papers, and a copy of any other application to the court, together with a copy of the order or judgment to be proposed thereon to the court, in every action or proceeding now pending for the dissolution of a corporation or a distribution of its assets, or which shall hereafter be commenced for such purpose, shall, in all cases, be served on the attorney-general, in the same manner as provided by law for the service of papers on attorneys who have appeared in actions, whether the applications but for this law would be *ex parte* or upon notice, and no order or judgment granted shall vary in any material respect from the relief specified in such copy or order, unless the attorney-general shall appear on the return day and have been heard in relation thereto; and any order or judgment granted in any action or proceeding aforesaid, without such service of such papers upon the attorney-general, shall be void, and no receiver of any such corporation shall pay to any person any money directed to be paid by any order or judgment made in any such action or proceeding, until the expiration of eight days after a certified copy of such order or judgment shall have been served as aforesaid upon the attorney-general.

38 Hun, 138.

Where applications to be made. § 9. All applications to the court contemplated by this act shall be made in the judicial district where the principal office of the insolvent corporation was located; and the venue of all actions or proceedings now pending, not in the judicial district where the principal office of the insolvent corporation was located, are hereby changed and transferred to the county and judicial district where such principal office was located.

Preference on calendars. § 10. All actions or other legal proceedings and appeals therefrom or therein brought by or against a receiver of any of the insolvent corporations referred to in this act, shall have a preference upon the calendars of all courts next in order to actions or proceedings brought by the people of the state of New York.

Repeal. § 11. All acts or parts of acts inconsistent herewith are hereby repealed.

L. 1884, Chap. 285 — An act to provide for the transfer of securities and property by bankrupt corporations to the receivers of such corporations and for the transfer by the superintendent of the insurance department to receivers of insolvent life insurance, and annuity companies of funds and securities deposited with such superintendent by such companies for the security of policy-holders.

All property, etc., to vest in receiver, except as to insurance companies. SECTION 1. In all cases where receivers have been or shall be appointed for any corporation of this state other than an insurance company on application by the attorney-general, all property, real and personal, and all securities of every kind and nature belonging to such corporation, no matter where located or by whom held, shall be transferred to, vested in and held by such receiver; provided, however, that such transfer shall only be made when directed by an order of the supreme court, due notice of the application for such order having been made on the attorney-general and the custodian of the funds, securities or property.

In case of insurance companies supreme court may order a transfer of securities to receiver, etc. § 2. In every case where a life insurance or annuity company has been or hereafter may be dissolved and a receiver thereof appointed, upon the application of the attorney-general, or by action begun in the name of the people of the state of New York, each and every security and fund which shall have been deposited by such company prior to its dissolution, with the superintendent of the insurance department, for the security and protection of its policy-holders or any class of such policy-holders, under the statutes in such cases made and provided, may by an order of the supreme court made at a special term thereof held within the judicial district in which the principal office of such company was located, prior to its dissolution, upon the application of the attorney-general, after service of eight days' written notice of such application upon the superintendent of the insurance department, be transferred from the said superintendent of the insurance department to the receiver of such company; and thereupon the said superintendent shall deliver such funds and securities to such receiver, and in him the title thereto shall immediately vest. Such receiver shall thereupon convert such securities and funds into money, and shall distribute the proceeds thereof, and of each and every class of such funds or securities, among the respective holders of valid policies of such company for whose benefit and security the deposit or deposits were originally made proportionately to the respective valuations of such policies, as shall be ascertained in proceedings taken by such receiver for the valuation of policies and the determination of the liabilities of such company under the statutes in such cases made and provided, and the course and practice of the supreme court in cases of insolvent corporations, until such valuation shall have been paid in full. If any portion of such proceeds shall then remain, such balance may, under an order of the supreme court in such behalf duly made at special term, be made a part of the general assets of such receivership, and thereupon be distributed by said receiver in payment of or upon the general liabilities of such dissolved company according to law.

L. 1885, Chap. 376 — An act to provide for the payment of wages to employees, operatives and laborers of domestic corporations, other than insurance and moneyed corporations, of which a receiver shall be appointed.

Wages of operatives preferred to other debts. SECTION 1. Where a receiver of a corporation created or organized under the laws of this state and doing business therein, other than insurance and moneyed corporations, shall be appointed, the

wages of the employees, operatives and laborers thereof shall be preferred to every other debt or claim against such corporation, and shall be paid by the receiver from the moneys of such corporation which shall first come to his hands

45 Hun, 329; 103 N. Y., 245.

L. 1886, Chap. 310 — An act to provide for the winding up of corporations which have been annulled and dissolved by legislative enactment.

Attorney-general to bring suits for winding up dissolved corporations. SECTION 1. Whenever any corporation organized under the laws of this state shall be annulled and dissolved by an act of the legislature, it shall be the duty of the attorney-general immediately thereafter to bring a suit to wind up and finally settle and adjust the affairs of such annulled and dissolved corporation.

45 Hun, 519.

Suits, how brought; who to be named as defendants. § 2. Such suit shall be brought in the supreme court in the name of the people of the state, in any county which the attorney-general may select. The president, or vice-president, or secretary, or treasurer of such dissolved corporation, who may have been in office at the time of the dissolution thereof, shall be named, as such officer, as defendant in such suit, and the summons and complaint therein shall be served upon him. If, at the time of such annulment and dissolution, there shall not be one of the above designated officers of such corporation, then such suit shall be brought against and the summons and complaint therein served upon any one of the persons who were last acting as directors of such corporation.

Court to appoint receiver; receiver's bond; officers, etc., not to be appointed. § 3. It shall be the duty of the special term of the supreme court in the county designated in such summons and complaint, or of any judge of said court who resides, in the judicial department in which such county is situated, upon the presentation of a certified copy of the act of the legislature annulling and dissolving a corporation, and of the summons and complaint founded thereon, immediately to appoint a receiver of the assets and property of such dissolved corporation; and the person so appointed shall be both the temporary and permanent receiver thereof, and shall give a bond with sureties to be approved by said court or such judge thereof, to the people of the state in the penalty of not less than ten thousand dollars, conditioned for the faithful discharge of his duties as such receiver, and for his due accounting for, and paying over all moneys and property which may come to his hands as such receiver. No one of the officers, directors or stockholders of such corporation shall be appointed such receiver thereof.

Receiver to cause inventory to be made. § 4. Such receiver shall, immediately after his appointment and the approval of his bond, cause an inventory of all the property of such dissolved corporation to be taken and filed in the office of the clerk of the county in which such action is pending, and for the purpose of ascertaining the nature, extent and location of such property, the said receiver shall have power to compel the attendance of witnesses, as hereinafter provided, and all evidence taken by or before said receiver in relation to such property shall be filed by him in the office of such county clerk.

45 Hun, 519.

Notice to creditors to present claims; proof of claims; list to be filed; application for sale of property; proceedings thereupon. § 5. The said receiver shall, immediately after his appointment, publish in two newspapers to be designated by said court, or such judge thereof, daily for one week, and for such longer time, not exceeding one month, as the said court or such judge thereof may by order designate, a notice to all creditors of such dissolved corporation to present their claims and demands against, and all evidences of indebtedness of, such dissolved corporation, to such receiver at a time and place to be designated in such notice. Such receiver is hereby authorized to examine on oath any of such creditors, or claimants, or other witnesses, as to any and all matters pertaining to any claim or de-

mand or evidence of indebtedness so presented. At the expiration of ten days from the date specified in such notice, or within such further time as may be allowed by said court or such judge thereof, the said receiver shall make a list of all the claims presented to or proved before him, in which list he shall specify the amount, origin and true consideration of each claim so presented to or proved before him, and the name of the person in whose behalf the same is presented or proved, and the date when such claimant became the true owner thereof. Such list, when so completed, shall be verified by such receiver, and shall thereupon be filed, together with such evidence as may have been taken by him, in the office of the said county clerk. The said receiver shall, immediately after such filing, publish a notice daily for fourteen days in two newspapers to be designated by said court, or such judge thereof, stating that such list will be presented to such court, or to a judge thereof, residing in such county, on a day and at a place to be designated in such notice, and the said court, or such judge thereof, will then and there be asked for an order directing the sale at public auction of all the property specified in such inventory. Any creditor or stockholder may appear and be heard at such time and place. It shall be the duty of said court, or of such judge thereof, to whom such list shall be presented, to examine the same together with such evidence as the receiver shall have taken, and to reject all claims, demands and evidences of indebtedness which were not legally incurred or created by said corporation, or which were in excess of its powers, or which are for any reason shown to be illegal; and no claim or demand shall be allowed for any greater amount than the money value of the consideration therefor, unless the said court or judge shall find and decide from the evidence taken by and before the receiver, that the person professing to own such claim does in truth own the same by reason of having taken a negotiable instrument or paper before the act dissolving and annulling the corporation alleged to be bound by such instrument or paper, and also before such instrument or paper was by its terms due, and that the same was taken for value paid and parted with in good faith before said act of dissolution and without knowledge or notice of any defect, want or deficiency of previous consideration, or other equity, offset, or defense originally attaching to such instrument or paper, or to the claim or demand upon which the same are founded. Such examination and rejection shall be made by such court or such judge thereof, and not by any referee.

Claims not presented to be barred; rejected claims, proceedings as to; appeal; order for property to be sold; proceedings thereupon; receiver's compensation; distribution to creditors and stockholders. §6. All creditors whose claims shall not have been presented as above provided shall be debarred from participating in the avails of the sale of the property described in said inventory. Any creditor whose claim may have been rejected, and who shall have appealed, may apply to said court or such judge thereof for an order that a pro rata amount of the avails of such sale which would have appertained to the claim of such creditor, had not the same been rejected, may be retained in court to abide the result of his appeal, and said court, or such judge thereof, shall have discretion to grant the same. Any claimant feeling aggrieved by such rejection may appeal therefrom to the general term and to the court of appeals, in the manner now provided by law for such appeals from orders in civil actions, but neither of such appeals shall stay the proceedings of such receiver, or court, or judge thereof, or a sale of such property as herein provided for. The amount of all claims and demands so rejected by said court or such judge shall be deducted from the total amount of claims and demands so filed by the said receiver, and an entry of such rejection shall be made upon said list by said court or such judge, and thereupon the said court or such judge shall by order, reciting the proceedings direct the immediate sale by said receiver, at public auction, at a time and place and in the manner, and after such notice as may be provided in said order, of all the property in said inventory specified, to such person, firm or corporation as shall bid the highest sum or amount therefor. The receiver shall report to said court or such judge thereof, the name of the highest bidder, the amount bid, and thereupon said court or such

judge thereof shall by order forthwith direct the said receiver by proper written instrument to convey and transfer all of the property described in said inventory, and offered for sale at said auction, to said highest bidder, who on receiving the same shall pay to the receiver the sum bid. The said court or such judge thereof, shall allow to the receiver two per cent upon the whole amount received by him from the sale of the property described in said inventory for his compensation as such receiver, and also his disbursements, including witness' fees, and the service of subpoenas, and to the attorney-general, and to such other counsel as the receiver may find it necessary to employ, a reasonable counsel fee. The residue of the amount in the hands of the receiver shall be by him distributed among the owners of the claims in said list, which have been allowed subject to the deductions above provided for in case of an appeal, pro rata, or in full if such residue shall be sufficient therefor, and the receipts of such owners therefor shall be taken upon such list of claims. The balance of such residue, if any, shall be distributed among the lawful stockholders of such corporation in proportion to their interest therein.

No stay of proceedings. § 7. No issue raised by answer, or demurrer, or otherwise to the complaint hereinbefore provided for shall stay the proceedings of the receiver, or court or a judge thereof.

Final discharge of receiver, proceedings for. § 8. The said receiver after such payment may apply to said court, or a judge thereof, for his final discharge, and if it shall appear that the said receiver has in all things fulfilled his duty in the premises, the said court or judge shall grant such final discharge, and said receiver, until so discharged, may as such receiver sue for and collect all debts due, and demands owing to such corporation.

County clerk, to issue subpoenas on request of receiver; oaths to witnesses; penalties. § 9. It shall be the duty of the clerk of the county in which such suit is brought, to issue, upon the request of the receiver, subpoenas to compel the attendance of witnesses to enable him to ascertain the nature, extent and location of the property of said corporation, and to give evidence concerning any claim which may be presented by any creditor against the estate of such corporation, which subpoenas shall be served in like manner as in civil actions, and the fees of the witness shall be the same as are now established by law in such actions. The receiver shall have full power and authority to administer oaths to all such witnesses and to any creditor of such dissolved corporation, and to examine them concerning the property of such dissolved corporation, and as to the claims presented against it. Disobedience to such subpoenas shall be a contempt of court, and shall be punished in like manner as other contempts of court are now punishable. Wilful false swearing by any witness or creditor in any such examination shall be deemed perjury, and shall be punishable as such in like manner as if committed by a witness on a trial of a civil action.

Suits and injunctions against receiver regulated. § 10. All applications for leave to sue such receiver and all applications for injunctions to restrain his proceedings shall be made only to the supreme court in the county in which such action was brought, and shall not be made to any other court, or to the supreme court in any other county, and shall not be granted except upon eight days' notice to the attorney-general of the time and place of making such application. In any action hereafter brought or now pending by the attorney-general, to close up, determine or settle the affairs of any corporation dissolved by legislative enactment, the judgment or determination of the supreme court at general term may be reviewed upon appeal to the court of appeals, as now provided by law, whether the judgment rendered in the case be interlocutory or final. [*Thus amended by L. 1887, ch. 601.*]

45 Hun, 519.

Repeal of other acts. § 11. This act shall take effect immediately, and all acts and parts of acts inconsistent therewith are hereby repealed.

ARTICLE THIRD.

ART. 3.

OF THE VOLUNTARY DISSOLUTION OF CORPORATIONS.

SEC. 58-65. [Repealed.]

- 66. Who may be receivers; security to be given.
- 67 & 68. Rights, interest and authority of receivers.
- 69. To prosecute stockholders for arrears on their stock.
- 70. Notice to be given by receivers; its contents. [467]
- 71. Acts of corporation after presenting petition, void.
- 72. Debtors to account to receivers; their powers to discover debts, etc.
- 73. Power of receivers to refer controversies; proceedings.
- 74. Duties of receivers; to call meetings of creditors, etc.
- 75. Subsisting contracts how cancelled.
- 76. Commissions to be allowed to receivers.
- 77. To retain monies to cancel subsisting contracts.
- 78. Also to meet recovery in suits pending.
- 79. Order of payment of debts.
- 80. Second and final dividend when to be made, how notified.
- 81. Proceedings therein; to be final, except certain cases.
- 82. Receivers not to be answerable for debts not exhibited.
- 83. Surplus to be distributed among stockholders.
- 84. Application of monies retained to meet suit.
- 85. Power of court of chancery over receivers.
- 86. When to render account on oath to court.
- 87. Notice of intent to render, when and how to be published.
- 88. Duty of master to whom account is referred.
- 89. Settlement of account by court, its effect; further accounts, etc.
- 90 & 91. [Repealed.]

[Sections 58-65 were repealed by L. 1880, ch. 245.]

[468]

[Sections 66 to 89, both inclusive, were saved by the repealing act of 1880, which declared them applicable to a receiver appointed as prescribed in § 2429 of the Code of Civil Procedure.]

§ 66. Any of the directors, trustees or other officers of such corporation, or any of its stockholders, may be appointed receivers, who, before entering upon the duties of their appointment, shall give such security to the people of this state, and in such penalty, as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all monies received by them. Receivers;
security.
18 How
Pr. R., 87.

§ 67. Such receivers shall be vested with all the estate, real and personal, of such corporation, from the time of their having filed the security herein before required, and shall be trustees of such estate for the benefit of the creditors of such corporation and of its stockholders. [469]
Their
rights.

1 N. Y., 333; 26 Barb., 59, 311; 23 Barb., 656; 1 Barb., 148; 3 Wend., 13; 23 How. Pr. R., 233; 73 N. Y., 571; 55 Barb., 217; 101 N. Y., 484.

§ 68. Such receivers shall have all the power and authority conferred by law upon trustees to whom an assignment of the estate of insolvent debtors may be made, pursuant to the provisions of the fifth chapter of the second part of the Revised Statutes. Their an-
thority.

26 N. Y., 350; 6 Bosw., 638; 55 Barb., 219; 4 T. & C., 632; 5 Robt., 362; 1 N. Y., 333; 23 Barb., 656; 1 Abb., 463; 6 Paige, 508; 37 Barb., 223; 24 How. Pr. R., 437; 178 N. Y., 14; 79 N. Y., 267; 81 N. Y., 242; 82 Hun, 320.

§ 69. If there shall be any sum remaining due upon any share of stock subscribed in such corporation, the receivers shall immediately proceed and recover the same, unless the person so indebted shall be wholly insolvent; and for that purpose may file their bill in the court of chancery, or may commence and prosecute an action at law, for the recovery of such sum, without the consent of any of the creditors of such corporation. To prose-
cute for
arrears of
stock.
25 Barb.,
100; 21
Barb., 619;
12 Barb.,
672; 2
Barb., 236;
1 Barb.,
Ch., 124; 23
N. Y., 7.

Barb., 656; 1 Barb., 236; 6 Bosw., 638; 28 Hun, 375; rev'd

TITLE 4.
Debts not
exhibited.

§ 82. After such second dividend shall have been made, the receivers shall not be answerable to any creditor of such corporation, or to any person having claims against such corporation, by virtue of any open or subsisting engagement, unless the demands of such creditor shall have been exhibited, and the engagements upon which such claims are founded, shall have been presented to the said receivers, in detail and in writing, before or at the time specified by them in their notice of a second dividend.

[L. 1821, 141, § 4.]

Surplus to
stockhold-
ers.
 6 Paige,
 503; 45 N.
 Y., 316.

§ 83. If after the second dividend is made, there shall remain any surplus in the hands of the receivers, they shall distribute the same among the stockholders of such corporation, in proportion to the respective amounts paid in by them, severally, on their shares of stock.

Money
retained

§ 84. When any suit pending at the time of the second dividend, shall be terminated, they shall apply the monies retained in their hands for that purpose, to the payment of the amount recovered, and their necessary charges and expenses; and if nothing shall have been recovered, they shall distribute such monies, after deducting their expenses and costs, among the creditors and stockholders of the corporation, in the same manner as herein directed in respect to a second dividend.

[472]

Control of
receivers,
&c.
 6 Paige,
 226.

§ 85. The receivers shall be subject to the control of the court of chancery, and may be compelled to account at any time; they may be removed by the court, and any vacancy created by such removal, by death or otherwise, may be supplied by the court.

Account by
them.

§ 86. Within three months after the time herein prescribed for making a second dividend, the receivers shall render a full and accurate account of all their proceedings to the court of chancery, on oath, which shall be referred to a master to examine and report thereon.

Previous
notice
thereof.

§ 87. Previous to rendering such account the receivers shall insert a notice of their intention to present the same, once in each week, for three weeks, in the state paper, and in a newspaper, of the county in which notices of dividends are herein required to be inserted, specifying the time and place at which such account will be rendered.

Master's
duty.

§ 88. The master to whom such account shall be referred, shall hear and examine the proofs, vouchers and documents offered for or against such account, and shall report thereon fully to the court.

Settlement
of account;
its effect.

§ 89. Upon the coming in of such report, the court shall hear the allegations of all concerned therein, and shall allow or disallow such account, and decree the same to be final and conclusive upon all the creditors of such corporation, upon all persons who have claims against it, upon any open or subsisting engagement, and upon all the stockholders of such corporation. Such receivers shall also account from time to time in the same manner, and with the like effect, for all monies which shall come to their hands after the rendering of such account, and for all monies which shall have been retained by them for any of the purposes herein before specified, and shall pay into court all unclaimed dividends.

Further
accounts to
be render-
ed.

[Sections 90 and 91 were repealed by L. 1880, ch. 245.]

ARTICLE FOURTH.

ART. 4.

[473]

OF PROCEEDINGS BY AND AGAINST PUBLIC BODIES, HAVING CERTAIN CORPORATE POWERS,
AND BY AND AGAINST THE OFFICERS REPRESENTING THEM.

SEC. 92-101. [Repealed.]

102. Judgments against certain officers to be laid before supervisors.

103. To be added by them to tax list, and collected as taxes.

104. County treasurer in certain cases to pay judgments.

105 & 106. When to be paid by supervisor or overseers of the poor.

107 & 108. [Repealed.]

[Sections 92-101 were repealed by L. 1880, ch. 245.]

[474]

§ 102. If judgment be rendered for any debt, damages or costs, against the board of supervisors of a county, against the county superintendents of the poor of any county, against any town or the supervisor thereof, or the overseers of the poor thereof, on account of the liability of such county or town; and such judgment be not suspended by writ of error or otherwise, or be not paid and satisfied before the next annual meeting of the board of supervisors of the county, a certified copy of the docket of such judgment, or the record thereof, if required by such board, shall be laid before the board of supervisors of the county at some annual meeting thereof.

Certain judgments to be laid before supervisors
29 Hun., 186; 30 Hun., 148; 33 N. Y., 337.

[475]

45 N. Y., 686; 5 Lans., 374; 20 Barb., 294; 11 Wend., 171; 12 How. Pr. R., 53; 7 How. Pr. R., 257.

§ 103. The board of supervisors shall add the amount of such judgment, together with interest thereon from the time of recovery, to the first Monday in February then next, and also the expenses of the certified copy of the docket or record of judgment mentioned in the preceding section, to the tax to be laid upon the county or town against which, or against the officers of which, such recovery shall have been had; which sums shall be assessed, levied and collected, as other contingent charges of such town or county, and shall be paid by the county treasurer, to the person recovering such judgment.

To be collected like taxes.
20 Barb., 294; 11 Barb., 117; 5 Lans., 374; 98 N. Y., 337.

§ 104. But if the treasurer of the county, against which, or against whose officers, such judgment shall be had, have sufficient monies in his hands belonging to such county, not otherwise specifically appropriated, he shall be bound to pay the amount of such judgment, upon the production of a certified copy of the docket thereof, or of the record, if required; and if he shall fail to do so on demand, he shall be personally liable for the amount of such judgment, with the interest, to be recovered in an action by the party in whose favor such judgment was rendered, or his representatives.

When to be paid by county treasurer.
20 Barb., 294.

§ 105. If the supervisor of a town or the overseers of the poor of a town, against whom any judgment shall have been rendered, which shall not be suspended by writ of error or otherwise, have sufficient monies in their hands belonging to their town, not specially appropriated, they shall in like manner pay the amount of such judgment and the interest thereon, upon the like evidence; and for a failure so to do, they shall in like manner be responsible personally to the party in whose favor such judgment was obtained.

When by supervisor and overseers.
14 Wend., 74; 45 N. Y., 686.

§ 106. If the recovery be had against a town in its own name, the supervisor thereof shall, in like manner and upon the like evi-

By supervisor.

TITLE 8.
 92 N. Y.,
 570; 98 N.
 Y., 397.

dence, pay the amount thereof with interest, out of any monies in his hands belonging to such town, not specially appropriated; and for a failure to do so, shall be personally responsible for such amount, to the party in whose favor such judgment was obtained.

[476] [Sections 107 and 108 were repealed by L. 1880, ch. 245.]

TITLE V.

[477-479] *Of Suits against Sheriffs, Surrogates and other Officers, on their official Bonds.*

[This title was repealed by L. 1880, ch. 245.]

TITLE VI.

[480-487]

Of Actions for Penalties and Forfeitures; and Provisions for the Collection and Remission of forfeited Recognisances, and Fines imposed by Courts.

[This title was repealed by L. 1880, ch. 245.]

TITLE VII.

[488-492]

Of Proceedings for the Admeasurement of Dower.

[This title was repealed by L. 1880, ch. 245.]

TITLE VIII.

[493-499]

Of Proceedings for the Collection of Demands against Ships and Vessels.

[This title was repealed, and a new system of proceedings established for the same purpose, by L. 1862, ch. 482, which immediately follows.]

Acts on the same subject.

L. 1862, Chap. 482—An act to provide for the collection of demands against ships and vessels.

When debt a lien on vessel, tackle, etc. **SECTION 1.** Whenever a debt, amounting to fifty dollars or upwards, as to a sea-going or ocean-bound vessel, or amounting to fifteen dollars or upwards, as to any other vessel, shall be contracted by the master, owner, charterer, builder or consignee, of any ship or vessel, or the agent of either of them within this state, for either of the following purposes:

1st. On account of work done or materials or other articles furnished in this state for or towards the building, repairing, fitting, furnishing or equipping such ship or vessel.

2d. For such provisions and stores furnished within this state as may be fit and proper for the use of such vessel, at the time when the same were furnished.

3d. On account of the wharfrage and expenses of keeping such vessel in port, including the expense incurred in employing persons to watch her.

4th. On account of loading or unloading, or for advances made for the purpose of procuring necessaries for such ship or vessel, or for the insurance thereof.

5th. Or whenever a debt amounting to twenty-five dollars or upwards shall be contracted as aforesaid, within this state, on account of the towing or piloting

such vessel, or on account of the insurance or premiums of insurance of or on such vessel, or her freight. Such debt shall be a lien upon such vessel, her tackle, apparel and furniture, and shall be preferred to all other liens thereon, except mariners' wages.

5 Hill, 34; 20 Wend., 177; 13 Wend., 390, 601; 5 Wend., 510, 564; 1 Wend., 557; 45 Barb., 269; 19 Abb., 51; 30 How. Pr. R., 186, 398; 50 Barb., 490; 2 Bosw., 509; 48 N. Y., 313; 57 N. Y., 116; 1 Abb., N. S., 420; 2 T. & C., 618; 4 id., 154; 44 N. Y., 415; 39 N. Y., 21; 36 N. Y., 358; 1 Hun, 650; 5 T. & C., 617; 1 J. & S., 387; 59 N. Y., 554; 71 N. Y., 413; 13 Hun, 632; 18 Hun, 56; 34 Hun, 192; 37 Hun, 52; 82 N. Y., 409; 83 N. Y., 552; 86 N. Y., 256; 43 Hun, 429.

When debt ceases to be a lien; specifications. § 2. Such debt shall cease to be a lien at the expiration of twelve months after the said debt was contracted, unless at the time when said twelve months shall expire, such ship or vessel shall be absent from the port at which said debt was contracted, in which case the said lien shall continue, until the expiration of thirty days after such ship or vessel shall next return to said port; and, in all cases, such debt shall cease to be a lien upon such ship or vessel, unless the person having such lien shall, within thirty days after said debt is contracted, cause to be drawn up and filed specification of such lien, which may consist either of a bill of particulars of the demand or a copy of any written contract under which the work may be done, with a statement of the amount claimed to be due from such vessel, the correctness of which shall be sworn to by such person, his legal representative, agent or assigns. [*Thus amended by L. 1886, ch. 88, superseding L. 1885, ch. 273.*]

57 N. Y., 112; 43 N. Y., 52; 36 N. Y., 662; 3 Lans., 417; 20 Johns. Ch. R., 194; 6 Hill, 494; 61 N. Y., 530; 71 N. Y., 413; 43 Hun, 429.

[See L. 1863, ch. 422, *post*, p. 2692.]

Specification of lien where to be filed. § 3. Such specifications shall be filed in the office of the clerk of the county in which such debt shall have been contracted, except that when such debt shall have been contracted in either of the counties of New York, Kings or Queens, then such specification shall be filed in the office of the clerk of the city and county of New York; and it shall also be the duty of any and all parties or persons, their heirs, their legal representatives, agents or assigns, after the filing of such specifications in the county clerk's office as in said act provided, in case the vessel is built, used, or fitted for the navigation of any of the canals or lakes of this state, to immediately thereafter, file or cause to be filed a copy of said specifications in the office of the auditor of the canal department, duly certified by the county clerk, in whose office the original specifications shall have been filed. [*Thus amended by L. 1879, ch. 334.*]

When warrant may issue to enforce lien. § 4. Any person having a lien upon any ship or vessel for any debt contracted for any of the purposes hereinbefore specified, may make application to any officer authorized by law to perform the duties of a justice of the supreme court at chambers in the county within which such ship or vessel shall then be, for a warrant to enforce the said lien, and to collect the amount thereof.

20 Wend., 181; 50 Barb., 499; 51 N. Y., 78; 43 Hun, 429.

Application for warrant. § 5. Such application shall be in writing and shall exhibit and specify:

1st. By whom and when such debt was contracted, and for what ship or vessel;

2d. The items composing such debts;

3d. The amount claimed, and that the same is justly due to the person in whose behalf the application is made, over and above all payments and just deductions;

4th. Any assignment or transfer or such debt, if any such has taken place since the same was contracted;

5th. When and where the specification of such debt was filed.

Such application shall be verified by the affidavit of the creditor, or of the person making the application, or of his or their agent in that behalf.

2 Robt., 26; 7 N. Y., 508; 3 Sandf., 372; 37 Hun, 52.

Warrant. § 6. The officer to whom such application shall be made shall thereupon issue a warrant to the sheriff specifying the amount of the claim, and the names of the persons making such claim, and commanding him to attach, seize and safely keep said ship or vessel, her tackle, apparel and furniture, to satisfy such claim, if established, to be a lien upon such vessel, according to law, and to make return of his proceedings under such warrant to the officer who issued the same within ten days after such seizure. Such sheriff shall also, in his return, state whether he has seized said ship or vessel by virtue of any other warrant or warrants, and specify in whose behalf, and for what sums such other warrants have been issued, respectively, and the time of his reception thereof.

50 Barb., 499.

Undertaking. § 7. Such warrant shall not be issued unless the person applying therefor shall deliver to the officer to whom the application is made to be filed by him, an undertaking to the effect that if the said applicant do not within the time hereafter specified in section twelfth of this act prosecute any bond which may be given upon the discharge of such warrant, or if the said applicant in any action brought upon such bond be finally adjudged not to have been entitled to such warrant, the parties giving such undertaking will pay all costs that may be awarded against such applicant, not exceeding the sum specified in the undertaking, which shall be at least one hundred dollars, and any damages that may be sustained by reason of the seizure of such vessel under such warrant, not exceeding the sum of fifty dollars. The undertaking required by this section shall be executed by the applicants or one of them, or their agent, and at least one surety, who shall be a resident and householder within this state. Such undertaking shall be approved by the said officer. [*Thus amended by L. 1863, ch. 422.*]

2 Bosw., 682; 4 Sandf., 493; 3 Sandf., 399, 572; 19 Wend., 527.

Duty of sheriff. § 8. Any sheriff to whom such warrant shall have been directed and delivered shall forthwith execute the same, and shall keep the said vessel, her tackle, apparel and furniture to be disposed of as is herein directed.

Notice of issuing of warrant to be published; copy of notice, when to be served on other claimants and lienors. § 9. The person applying for such warrant shall, within three days after the issuing thereof, cause a notice to be published once in each week, for four successive weeks, in some newspaper published in the county in which such vessel may then be, or if no newspaper be so published in such county, then in the nearest county in which a newspaper shall be so published, setting forth that such warrant has been issued, the amount of the claim specified therein, the day when such warrant was issued, and that such vessel will be sold for the payment of the claims against her, unless the master, owner, or consignee thereof, or some person interested therein, appear and discharge such warrant according to law, within thirty days from the first publication of such notice, and in case the vessel is built, used, or fitted for the navigation of any of the canals or lakes of this state, shall also serve a copy of such notice personally at least ten days before the issuing of the order of sale mentioned in section fifteen of the act hereby amended, upon all persons who may have filed any claim or lien upon such ship or vessel, by mortgage or otherwise, in the office of the auditor of the canal department, or the service of such notice may be made at least twenty days before the issuing of said order above mentioned, by leaving a copy of the same at their dwelling-house in charge of some person of suitable age, or by depositing the same in the post-office properly folded and directed to such persons at their respective places of residence and paying the postage thereon. [*Thus amended by L. 1879, ch. 334.*]

Application to discharge warrant. § 10. The owner, consignee, agent or commander of any vessel seized by virtue of any warrant issued pursuant to the

provisions of this title, or any person interested in such vessel, may at any time before such vessel be sold, as hereinafter provided, apply in person or by attorney to the officer who issued such warrant, on one day's notice, to the said attaching creditor or his attorney, for an order to discharge the same. Said notice shall specify the names, places of residence and places of business of the proposed sureties.

Bond; sureties. § 11. Such person shall execute and deliver to the officer to whom such application is made a bond to the creditors prosecuting such warrant in a penalty at least double the amount specified in the warrant, conditioned that the obligors therein will pay the amount of any and all claims and demands which shall be established to be due to the person or persons in whose behalf such warrant was issued, and to have been a subsisting lien upon such vessel pursuant to the provisions of this act at the time of exhibiting the same. In all such cases the attaching creditors shall have the right to examine the sureties as to their sufficiency, at such time and place as shall be fixed by the judge to whom application is made.

26 Wend., 505; 19 Wend., 527; 2 Robt., 26.

When warrant to be discharged. § 12. Upon such bond being executed and delivered to such attaching creditor or his attorney, and the taxed fees of the sheriff paid, the said officer shall thereupon grant his order discharging the warrant that may have been issued by him in favor of such creditor, and no further proceedings against the said vessel so seized shall be had under the provisions of this title founded upon any demand secured by such bond. Such bond may be prosecuted in any court having jurisdiction thereof at any time within three months after such delivery, but not afterwards.

Action on bond. § 13. If in any action brought upon such bond it be found that any sum be due the plaintiff, which was a subsisting lien upon such ship or vessel at the time of exhibiting the same as herein provided, judgment shall be rendered that the plaintiff recover the same with the costs and allowances of the action and the costs of the attachment, as herein provided, and he have execution therefor. But if in such action it be found that no subsisting lien existed in favor of the plaintiff at the time of exhibiting his claim, then judgment shall be rendered against such plaintiff for the costs and allowances of such action and the costs of the attachment as herein provided, including the amount of the sheriff's fees due and paid on releasing such vessel from the warrant.

Costs on attachment; sheriff's fees. § 14. The costs of the attachment shall be in addition to the disbursements; for filing specification of a lien, two dollars; for exhibiting a lien and procuring a warrant therefor, when the amount of the lien is under fifty dollars, ten dollars; when the amount of the lien exceeds fifty dollars and is under two hundred and fifty dollars, twenty dollars; when the amount of the lien exceeds two hundred and fifty dollars and is under one thousand dollars, thirty dollars; and when the amount of the lien exceeds one thousand dollars, fifty dollars; for attending to the discharge of any warrant upon a bond, ten dollars. The sheriff shall be entitled in proceedings under this act to the following fees and expenses: For serving warrant, one dollar; for returning the same, one dollar; for the expenses of keeping such vessel in custody, the necessary sums paid by him therefor, not exceeding, however, the sum of two dollars and fifty cents for each day the vessel shall have been held by him in custody. Such sheriff shall not be entitled to receive any other or greater sums than those above specified, for any service rendered by him in any proceeding under this act, nor shall he be allowed expense of custody upon more than one warrant at the same time. All costs, disbursements and fees shall be verified by affidavit and adjusted by the officer who issued the warrant.

When property to be sold. § 15. If the creditor who shall have exhibited his claim shall not have been satisfied, and if such vessel shall not have been discharged within thirty days after the first publication of the notice required by the ninth section of this act, upon due proof of the publication of such notice, the

officer who issued such warrant shall issue his order to the sheriff holding the vessel under such warrant, directing such sheriff to proceed and sell the vessel so seized by him, her tackle, apparel and furniture, and such order shall state the amount deemed necessary to be raised to satisfy all unsatisfied liens which have been exhibited against such vessel. Upon proof of personal service of the notice required by the ninth section of this act, and of notice of the application for sale upon the owners of the vessel, and upon all other unpaid creditors who have filed specifications of their liens pursuant to the provisions of this act, such order of sale may in the discretion of the officer be issued at any time after the seizure of such vessel.

Notice of sale. § 16. Within ten days after the service of such order the sheriff shall, unless such order be sooner vacated, proceed to sell the vessel so seized by him, her tackle, apparel and furniture, upon the same notice, in the same manner, and in all respects subject to the provisions of law in case of the sale of personal property upon execution.

Proceeds of sale. § 17. The sheriff shall return to the officer granting such order his proceedings under the same, and the proceeds of such sale, after deducting his fees and expenses in seizing, preserving, watching and selling such vessel when duly taxed, shall be retained by such sheriff in his hands, to be distributed and paid as hereinafter directed.

Notice of distribution of proceeds. § 18. At the time of issuing any such order of sale, the officer granting the same shall order a notice to be published in the same newspaper in which the notice of seizure is required hereby to be published once a week for three weeks, requiring all persons who have any liens upon such vessel by virtue of the provisions of this act, and the master, owner, agent or consignee and all other persons interested in such vessel to appear before him at a day to be therein specified, not less than thirty and not more than forty days from the first publication of such notice, to attend a distribution of the proceeds arising from the sale of such vessel, her tackle, apparel and furniture. The officer may in his discretion direct such distribution to be made before a referee to be appointed by him on notice.

Liens against proceeds of sale; costs of distribution. § 19. Such proceeds of any sale under the provisions of this act shall, until distributed as herein provided, stand in place of the vessel, and until such distribution any person entitled under this act to enforce a lien against such vessel may enforce the same against such proceeds, in the same manner as is herein provided for enforcing a lien against the vessel herself, and with like effect. Upon the distribution of such proceeds, the various claims exhibited, which are found to be subsisting liens upon such vessel, or the proceeds thereof according to the provisions of this act, shall, with their respective costs, expenses and allowances, be ordered to be paid out of such proceeds in the order of the delivery of the respective warrants to the sheriff. The costs, disbursements and allowances upon such distribution shall be the same as those allowed in civil actions upon a trial.

Who may contest claims. § 20. At any time before the final distribution of such proceeds the master, owner, agent, consignee or any person having any interest whatever in such proceeds may contest any claim which shall have been exhibited against such vessel or the proceeds thereof.

Statement to be filed with officer; copy served. § 21. In case of such contest the party making objection to any such claims shall file with the officer a written statement or answer designating the claims he desires to contest, and controverting such of the allegations of the petition exhibiting such claim as he may be able to controvert, and likewise setting up any other matter of defence thereto. Such statement or answer shall be verified by the party presenting the same to the effect that the same is true to the best of his knowledge or belief. A copy thereof shall within five days from the filing thereof be served upon the person whose claim it is intended to contest or his attorney, otherwise it shall be deemed abandoned.

When statement stricken out. § 22. If such answer do not contain matter of defence to such claim; it may be stricken out on motion of any person who has exhibited any claim against said vessel or the proceeds thereof.

Trial of issues thereon. § 23. The issue between such contestants shall be tried before a judge in like manner as other issues which are authorized by law to be tried before a judge, and at some early day to be fixed by the officer who issued the warrant, or the same may be referred by such officer to some competent referee, to hear and determine the same in like manner as in civil actions.

Appeal. § 24. Either party may have the same right to except to and appeal from the report of such referee or the decision of such judge as in civil actions, and on such appeal the finding of such referee or court, both of law and of fact, shall be examined and may be reversed or modified, or a new trial may be ordered. Judgment for costs shall be rendered in favor of the successful party as in personal actions, and the successful party shall be entitled to recover the costs and allowances provided for in the Code of Procedure in civil actions.

Distribution regulated. § 25. When the amount of all the claims which shall have been exhibited, and which are found to have been subsisting liens upon such vessel at the time of exhibiting the same, shall have been finally determined, the said proceeds shall be distributed by the court as provided in section eighteen of this act, on motion of any person interested therein or otherwise. Any uncontested claims entitled by this act to be paid out of such proceeds prior to the claims which may be contested, shall, on motion of the parties interested, be paid in the order of their respective priorities, notwithstanding such contest with costs; and if at any time it be made to appear that after payment of all prior uncontested claims and their respective costs, and after deducting an amount sufficient to pay all prior contested claims and costs, there will remain a surplus of such proceeds applicable to the payment of any subsequent uncontested claims. Such claims may, on notice to the owner or agent of the vessel, or other parties interested, be ordered to be paid out of such surplus, with costs.

Proceeds subject to direction of court. § 26. The proceeds of any sale of any vessel under the provisions of this act shall be subject to the direction of the court, and may at any time be invested by such court, according to the practice thereof.

Lien may be assigned. § 27. Whenever any person having a lien against any ship or vessel shall have filed specifications thereof as provided by this act, such lien may be assigned and transferred by an instrument in writing, duly acknowledged and filed in the same place where the original specifications of such liens were filed; such assignment shall describe the debt intended to be transferred, and specify the date of the filing the specification thereof, and shall state to whom it is intended to transfer it. Such transfer, and the name of the person or persons to whom such lien has been transferred, shall be noted by the clerk opposite the original entry of such lien, and after the filing of such assignment and transfer, but not otherwise, the person to whom such lien has been transferred shall be entitled to enforce the same in like manner as the person who transferred the same could have done.

Further provisions as to discharge of lien. § 28. Whenever any specifications of any lien upon any ship or vessel shall have been filed pursuant to the provisions of this act, and no warrant has been issued to enforce the same, any person owning or interested in such ship or vessel may apply to any justice of the supreme court for leave to discharge such lien upon giving bonds therefor. Such application shall be in writing, and shall set forth the amount of the lien claimed to be subsisting and the grounds of defence thereto; it shall also set forth the names of two persons, proposed sureties for such lien, with their respective residences and places of business, which sureties shall, if leave to bond be granted, justify on notice to the person having the lien before the officer granting such leave. Upon presenting such application, with proof that a copy thereof, with at least five days' notice of the time and place of presenting the same, has been served upon

the person having such lien, such officer may, if no just cause be shown in opposition thereto, grant leave to bond the said claim.

Discharge of lien. § 29. When such leave be given, and upon the execution and delivery to the person having such lien of the bond prescribed in section seven of this act approved by the officer, such officer shall direct that the said lien be marked by the clerk as discharged, and the same shall cease to be a lien upon such vessel.

Distribution of surplus. § 30. If after payment of all claims which have been exhibited and been found to be payable out of the proceeds of the sale of any vessel under this act, a surplus thereof remain, such surplus may be distributed by the court to the persons entitled thereto, but such distribution shall not be made until a notice shall have been published specifying the amount of such surplus proceeds, the names of the persons applying therefor, together with the name of the ship or vessel from which the same arose, and the date of the sale of such vessel. Such notice shall be published in the same manner and for the same time as prescribed in section nine of this act.

Absence or inability of judge. § 31. Whenever any proceeding under this act shall have been commenced before any judge, the same and every part thereof may, in the absence or inability of such judge, or by his order to that effect, be continued before any other judge of the same court.

Sheriff may be compelled to return warrant. § 32. Every sheriff to whom a warrant may have been delivered, may be compelled by any officer having jurisdiction over the proceedings thereon, to return such warrant, with his proceedings thereon, and to pay over moneys in his hands, and to take any steps necessary for the safety of said vessel pursuant to any order for that purpose, by an order of such officer, and by process of attachment for disobedience thereof, on the application of any person interested therein.

Lien on vessel causing damage. § 33. Whenever any ship or vessel shall have been run down or afoul of by any other ship or vessel, through the negligence or wilful misconduct of those navigating such other ship or vessel, and shall thereby have sustained damage to the extent of fifty dollars, the owner of the ship or vessel so sustaining damage shall have a lien upon the ship or vessel causing such damage in manner aforesaid, her tackle, apparel and furniture, to the extent of such damage. The master, owner, agent or consignee of the ship or vessel so receiving damage, may enforce the said lien in like manner and with the same effect as in case of other liens created by this act, but such proceedings must be commenced within ten days after the damage shall be done, otherwise such damage shall cease to be a lien upon such ship or vessel.

[Section 34 repeals prior laws.]

When act not to apply. § 35. This act shall not apply to debts contracted before this act shall take effect.

L. 1863, Chap. 422 — An act to amend chapter four hundred and eighty-two of the laws of one thousand eight hundred and sixty-two, in relation to liens on vessels.

[Section 1 amends L. 1862, ch. 482, § 7.]

Lien on vessels navigating the lakes and St. Lawrence river. § 2. The second section of the said chapter shall not apply to vessels navigating the western and north-western lakes, or either or any of them or the St. Lawrence river. Any debt contracted by the master, owner, charterer, builder or consignee of any ship or vessel navigating such lakes, or either of them, or navigating said river, or by the agent of such master, owner, charterer, builder or consignee, shall cease to

be a lien at the expiration of six months after the first day of January next succeeding the time such debt shall have been contracted, unless during the said six months such ship or vessel shall be absent from the port at which such debt was contracted, in which case the said lien shall continue until the expiration of ten days after such ship or vessel shall next return to said port. In all cases such debt shall cease to be a lien upon such ship or vessel, unless the person having such debt, shall, by the first Tuesday of February next succeeding the time such debt shall have been contracted, cause to be drawn up, verified and filed, specifications of such debt, in the form and comprising the statements prescribed by said chapter. [*Thus amended by L. 1885, ch. 216.*]

[Supplementary Title.]

TITLE 8^A.

Mechanics' and Laborers' Liens on real Property.

ART. 1.—The general mechanics' liens law of 1885.

ART. 2.—Mechanics' liens on public works in cities.

ART. 3.—General and miscellaneous provisions relating to mechanics' and laborers' liens.

ARTICLE FIRST.

THE GENERAL MECHANICS' LIENS LAW OF 1885.

L. 1885, Chap. 342—An act for the better security of mechanics, laborers and others who perform labor or furnish material for buildings and other improvements in the several cities and counties of this state, and to repeal certain acts and parts of acts.

Persons performing labor or furnishing materials to have a lien on premises, etc., upon filing notice; owner not liable beyond sums remaining unpaid. SECTION 1. Any person or persons, firm or firms, corporation or association, who shall hereafter perform any labor or services, or furnish any materials which have been used or which are to be used in erecting, altering or repairing any house, wharf, pier, bulkhead, bridge, vault, building or appurtenances to any house, building or building lot, including fences, sidewalks, paving, fountains, fish-ponds, fruit and ornamental trees, or who shall hereafter perform any labor or services, or furnish any materials which have been used or which are to be used in improving or equipping any house, building or appurtenances with any chandeliers, brackets or other fixtures or apparatus for supplying gas or electric light, with the consent of the owner, as hereinafter defined, or his agent or any contractor, or subcontractor, or any other person contracting with such owner to erect, alter, repair, improve or equip as aforesaid, within any of the cities or counties of this state, may, upon filing the notice of lien prescribed in the fourth section of this act, have a lien for the principal and interest of the price and value of such labor, and material upon such house, wharf, piers, bulkheads, bridges, vault, building or appurtenances, and upon the lot, premises, parcel or farm of land upon which the same may stand or be intended to stand, to the extent of the right, title and interest at that time existing of such owner, whether owner in fee or of a less estate, or whether a lessee, for a term of years, or vendee in possession under a contract existing at the time of the filing of said notice of lien, or of the owner of any right, title or interest in such estate, which may be sold under an execution under the general provisions of the statutes in force in this state relating to liens of judgment and enforcement thereof, and also to the extent of the interest which the owner may have assigned by a general assignment for the benefit of creditors, within thirty

days prior to the time of filing the notice of lien specified in the fourth section of this act. But in no case shall such owner be liable to pay by reason of all the liens filed pursuant to this act, a greater sum than the price stipulated and agreed to be paid in such contract, and remaining unpaid at the time of filing such lien, or, in case there is no contract, than the amount of the value of such labor and material then remaining unpaid, except as hereinafter provided. [*Thus amended by L. 1888, ch. 316.*]

49 N. Y., 332; 20 N. Y., 247; 19 N. Y., 234; 9 N. Y., 435; 11 Barb., 9; 4 E. D. Smith, 734; 3 id., 632; 2 id., 543, 583, 594, 616, 662, 681; 1 id., 725; 1 Duer, 675; 17 How., 449; 7 id., 350; 6 Abb., 19; 4 Abb., 263; 2 Abb., 93, 104; 31 N. Y., 287; 5 Lans., 174; 6 Hun, 560; 67 N. Y., 311; 8 Hun, 144; 9 Hun, 424; 7 Daly, 471; 66 N. Y., 629; 10 Hun, 609; 10 Hun, 506; 57 Barb., 299; 13 N. Y., 70; 7 Hill, 525; 4 id., 193; 12 Wend., 373; 4 E. D. Smith, 727; 3 id., 660; 2 id., 560, 693; 1 id., 625, 647, 652, 658, 692, 717; 2 T. & C., 363; 7 Daly, 471; 5 Daly, 540; 54 How. Pr. R., 446; 55 id., 121, 333; 6 Abb. N. C., 371; 6 Daly, 1; 7 Daly, 30; 8 Daly, 128, 166, 466; 81 N. Y., 211; 52 N. Y., 346; 50 N. Y., 360; 3 Hun, 570; 6 T. & C., 310; 6 id., 841; 76 N. Y., 50; 18 Hun, 51; 74 N. Y., 348; 78 N. Y., 30; 63 N. Y., 476; 14 Hun, 581; 62 Y. Y., 620; 1 T. & C., 403; 2 Abb., N. C., 119; 69 N. Y., 618; 7 Hun, 495; 65 N. Y., 232; 9 Daly, 218, 240; 26 Hun, 134; 27 Hun, 377; 24 Hun, 538; 83 N. Y., 279; 36 Hun, 353; 41 Hun, 391; 42 Hun, 466; 43 Hun, 17, 413; 90 N. Y., 336; 91 N. Y., 231; 15 J. & S., 1; 93 N. Y., 539; 94 N. Y., 183, 394.

Liability of owner, etc., who pays by collusion money, etc., to avoid this act. § 2. If the owner or such person in interest as aforesaid, of any house, wharf, pier, bulkhead, bridge, vault, building or appurtenances, for or toward the construction, altering, repairing or improvement of which, labor and service have been performed or materials have been furnished by contract, whether oral or written, shall for the purpose of avoiding the provisions of this act or in advance of the terms of any contract, pay by collusion any money or other valuable thing on such contract, or give a mortgage or make any other lien or incumbrance upon said house, wharf, vault, building or appurtenances, lot, premises, parcel or farm of land upon which the same may stand or be intended to stand, or said improvement shall be made, and the amount still due or to become due to the contractor, sub-contractor or assignee after such payment has been made, shall be insufficient to satisfy the claims made in conformity with the provisions of this act, the owner or other person in interest as aforesaid, shall be liable to the amount that would have been unpaid to said contractor, sub-contractor or assignee, had said owner or other person in interest made no such payment or given no such mortgage, or effected no such lien or incumbrance, at the time of filing the notice of lien prescribed in the fourth section of this act, in the same manner as if no such collusive payment, mortgage, lien or incumbrance had been made, given or effected.

1 E. D. Smith, 687, 692; 28 How. Pr. R., 150; 5 Hun, 12.

Persons performing labor or furnishing material may demand terms of contract, etc. § 3. Any person or persons, firm or firms, corporation or association, performing any labor, or service, or furnishing any materials for any of the purposes specified in the first section of this act, to or for any person other than the owner, may at any time demand of such owner or of his authorized agent, the terms of the contract or agreement by which said house, wharf, pier, bulkhead, bridge, vault, building or appurtenances is being erected, altered, repaired, or improvements made to any such house, building or building lot, and the amount due or unpaid the person or persons, firm, corporation or association, erecting, altering, repairing or improving the same; and if such owner or his agent at the time of said demand shall neglect or refuse to inform the person making such demand of the terms of the contract or agreement under which the same are being erected, altered, repaired or made, and the amount due and unpaid upon such contract or agreement therefor, or shall intentionally and knowingly falsely state the terms of said contract or agreement, or the amount due or unpaid thereon; and if the person, persons, firm or firms, corporations or associations furnishing such materials or performing such labor or service, shall sustain loss by reason of such refusal or neglect or false statement, the said owner shall be liable to them in an action

therefor and the return unsatisfied of an execution against the party to whom such materials were furnished or for whom such labor and service were performed, in an action for the collection of the value thereof, shall be presumptive proof of such loss, and the person or persons, firm or firms, corporation or association furnishing such materials or performing such labor and service or making such improvement, shall by filing within the time and in the manner the notice of lien prescribed by this act, have a lien upon the house, wharf, vault, pier, bridge, bulkhead, building or appurtenances, and upon the lot, premises, parcel or farm of land upon which the same may stand or be intended to stand, or improvement is made, as in this act provided, for all the materials furnished and labor and service performed after such neglect, refusal, or false statement.

Notice of lien, time of filing; contents; verification; lien docket; service on owner; effect thereof; clerk's fees. § 4. At any time during the performance of the work or the furnishing of the materials, or within ninety days after the completion of the contract or the final performance of the work, or the final furnishing of the material for which a lien is claimed, dating from the last item of work performed or from the last item of material furnished, the person or persons, firm or firms, corporation or association furnishing such materials or performing such labor or service may file a notice of lien in writing in the clerk's office in the county where the property is situated against which the lien is asserted, containing the names and residences of the claimants, the nature and amount of the labor and services performed, or the materials furnished or to be furnished, with the name of the owner, lessee, general assignee or person in possession of the premises against whose interest a lien is claimed; the name of the person or persons, firm or firms, corporation or association by whom he was employed, or to whom he furnished or is about to furnish such materials, or whether all the work for which the claim is made has been actually performed or furnished, and if not, how much of it, and also a description of the property to be charged with a lien sufficient for identification, and if in a city or village the situation of the building or buildings by street and number, if the street and number be known. But the failure to state the name of the true owner, lessee, general assignee, or person in possession shall not impair the validity of the lien. The said notice of lien must be verified by the person or one of the persons, member of a firm or firms, an officer of the corporation or association making the claim or his, its or their agent, to the effect that the statements therein contained are true to the knowledge or information and belief of the person making the same. The county clerk of each county shall provide and keep a book in his office to be called the "lien docket," which shall be suitably ruled in columns headed "claimants," "against whom claimed," "owners and parties in interest," "premises," "amount claimed;" in which he shall enter the particulars of such notice of lien together with the date, hour and minute of filing of the notice of lien, and what proceedings have been had, the names of the owners and persons in interest, and other persons against whom the claims are made shall be entered in said book in alphabetical order. A fee of twenty cents shall be paid to said clerk on filing such notice of lien. Every claimant shall within ten days after filing his notice of lien as herein provided, serve a copy of such notice upon the owner, or other person in interest by delivering the same to him personally or by leaving a copy thereof at his last known place of residence in the city or town in which such lands or part thereof are situated, with some person of suitable age and discretion, or if such owner or person in interest has no such residence, or such person cannot be found, by affixing a copy thereof conspicuously on said premises described in said notice of lien, between the hours of nine o'clock in the morning and four o'clock in the afternoon. And after such service such owner or the person in interest shall not be protected in any payment made to such contractor or other claimant.

20 N. Y., 247; 3 E. D. Smith, 621, 657, 666; 1 id., 654, 687; 4 Abb., 432, 472; 3 Abb., 475; 3 T. & C., 493; 67 N. Y., 215; 40 How. Pr. R., 94; 6 Abb. N. C., 367; 55 How. Pr., 121; 6 T. & C., 310; 55 N. Y., 491, 496; 67 Barb., 463; 21 J. & S., 158; 17 Abb. N. C., 357; 13 J. & S., 183; 36 Hun. 353; 85 N. Y., 413; 42 Hun. 465.

Liens provided for in this act to have priority over liens mentioned. § 5. The liens provided for in this act shall be preferred as prior liens to any conveyance, judgment or other claim which was not docketed or recorded at the time of filing the notice of lien prescribed in the fourth section of this act, and prior to advances made upon any mortgage on the premises after the filing of such notice of lien, and prior to the claim of any creditor who has not furnished materials or performed labor upon any land, or towards the erection or improvement of premises, described in said notice of lien and which have been assigned by the owner, lessee, or person in possession thereof, by a general assignment for the benefit of creditors within thirty days before the filing of the notice of lien provided for in the fourth section of this act. But nothing in this act shall affect the priority of the amount actually owing on a mortgage given for purchase-money. In cases in which the owner has made an agreement to sell and convey the premises to the contractor or other person, such owner shall be deemed to be the owner within the intent and meaning of this act, until the deed has been actually delivered and recorded, conveying said premises pursuant to such agreement.

Liens to bind only for one year unless action is commenced. § 6. No lien provided for in this act shall bind the property therein described, for a longer period than one year after the notice of lien has been filed, unless within that time an action is commenced to enforce the same; and if the action is in a court of record, a notice of the pendency of such action is filed with the county clerk of the county in which such notice of lien is filed, containing the names of the parties to the action, the object of the action, and a description of the premises affected thereby, and the time of filing the notice of lien. Or unless an order be made by a court of record continuing such lien, and a new docket be made stating such fact. And when a claimant is made a party defendant to any action brought to enforce any other lien, such action shall be deemed an action to enforce the lien of such defendant, who is a claimant within the provisions of this act. The neglect to file the notice of pendency, provided for by this act, shall not abate any action which may be pending to enforce the lien, but such action may be prosecuted to judgment against the person or persons, firm or firms, corporation or association liable for the debt.

13 N. Y., 305; 29 Barb., 631; 19 How. Pr. R., 449; 4 E. D. Smith, 731; 6 Abb., 99; 54 N. Y., 226; 57 Barb., 168; 3 Lans., 136; 40 How. Pr. R., 94; 50 How. Pr. R., 815; 41 Hun, 390; 42 Hun, 465.

Claimant may enforce claim by action. § 7. Any claimant who has filed the notice of lien mentioned in the fourth section of this act, may enforce his claim against the property therein mentioned, and against the person or persons, firm or firms, corporation or association, liable for the debt, by a civil action in a court of record in the city or county where the property is situated, which would have jurisdiction to render a judgment in an action founded upon a contract, for a sum equal to the amount of the lien.

Manner and form of action, evidence, etc. § 8. The manner and form of instituting and prosecuting any such action to judgment, or an appeal from such judgment shall be the same as in actions for the foreclosure of mortgages upon real property, except as herein otherwise provided. A certified copy of the notice of lien filed, as herein provided, shall be entitled to be read in evidence, with the same force and effect as if the original were provided, and such copy shall be *prima facie* evidence of the execution and filing of the original.

Action, in what court; summons; complaint. § 9. An action to foreclose a lien, provided for in this act, may be brought in a court not of record, which would have jurisdiction to render a judgment in an action upon a contract for a sum equal to the amount of the lien, and shall be commenced by the personal service anywhere within this state, of a summons and a complaint verified according to the provisions of section five hundred and twenty-six of the Code of Civil Procedure, upon the owner or other person in interest as described heretofore in this act. The complaint must set forth substantially all the facts contained in the notice of

lien filed with the clerk of the county as provided in section five of this act, and the substance of the contract. The form and contents of the summons shall be the same as prescribed by the Code of Civil Procedure for the commencement of an action in a court not of record. The summons must be returnable not less than twelve nor more than twenty days after the date when it is issued.

75 N. Y., 567; 2 E. D. Smith, 639; 4 E. D. Smith, 720; 57 Barb., 167; 40 How. Pr. R., 95; 19 N. Y., 440; 29 Barb., 631; 2 E. D. Smith, 577; 1 id., 687, 699, 719; 17 How. Pr. R., 449; 7 id., 350; 2 Abb. N. C., 114; 6 Abb. N. C., 356; 32 Hun, 14; 94 N. Y., 31.

When personal service of summons cannot be made. § 10. When the summons in an action in a court not of record cannot be served personally on the owner or party in interest, by reason of absence from the state or concealment therein, such service may be made by leaving a copy of such summons at the last place of residence of such owner or person in interest, as aforesaid, and by publishing a copy of such summons for three weeks in succession in a newspaper published in the city or county where the property is situated. If the service of the summons is made by publication, the time when said summons is returnable shall commence to run from the day of the last publication.

Proceedings in court on return of summons. § 11. At the time and place specified in the summons for the return thereof, issue must be joined if both parties appear, by the owner or other person in interest filing with the justice an answer in writing verified as herein provided for verifying the complaint, and which may contain a general denial of each allegation of the complaint or a specific denial of one or more of the material allegations thereof; it may also set forth any legal or equitable defense or counter-claim to such complaint. If the owner or other party in interest fails to appear on the return day of the summons on proof by affidavit of the service of the summons and complaint, if personal service thereof be made, or if by publication or proof of the service of summons by advertisement, judgment may be entered for the amount claimed in the complaint with the costs; execution may thereupon be issued for the collection of said judgment and costs, the same as upon judgments in actions on contract in such courts, except that the execution shall direct the officer to sell the right, title and interest of the owner or other person in interest as aforesaid in the premises, upon which the claim set forth in the complaint was a lien at the time of filing the notice of lien prescribed in the fourth section of this act.

1 E. D. Smith, 691, 671; 8 How. Pr., 199; 57 Barb., 172; 77 N. Y., 489; 93 N. Y., 530.

Issue, how to be tried. § 12. The issue joined as provided in the preceding section, must be tried the same as other issues are tried in the respective courts in which the action is brought, and the judgment thereon be enforced; if for the claimant as provided in the preceding section, if for the owner or other person in interest it must be enforced the same as in actions arising on contracts in the respective courts.

12 Wend., 273; 1 E. D. Smith, 625, 668, 681, 722; 2 E. D. Smith, 662; 4 E. D. Smith, 721; 4 T. & C., 600; 17 Abb. N. C., 357.

Appeals. § 13. Appeals may be taken from such judgments rendered in courts not of record, in the same manner and according to the same provisions provided by statute for appeals from judgments in actions in such courts arising on contract for the recovery of money only.

4 E. D. Smith, 719.

Costs and disbursements. § 14. Costs and disbursements, except in courts not of record, in which they shall be the same as allowed in civil actions in such courts, shall rest in the discretion of the court, and may be awarded to or against the plaintiff or plaintiffs, defendant or defendants, or any or either of them as may be just and equitable except as provided in section nineteen of this act, and shall be included in the judgment recovered therein. The expenses incurred in serving the summons by publication may be allowed in courts not of record, and added to the amount of costs now allowed in said courts. When an action is brought in

a court of record such direction shall be made in the discretion of the court, as to the payment of costs as shall be just and equitable, and the judgment entered shall specify to whom and by whom the costs are to be paid.

Claimant failing to establish lien may recover amount due. § 15. Whenever in any action brought under the provisions of this act, any claimant shall fail, for any reason, to establish a valid lien, he may nevertheless recover therein judgment against the party or parties to the action for such sum or sums as may appear to be due to him, and which he might recover in an action upon a contract against the said party or parties

Transcript of judgment, filing of, in other county, etc. § 16. A transcript of every judgment rendered under and according to the provisions of this act headed "lien docket" shall be furnished by the clerk of the county where rendered and docketed to the successful party who may file the same with the clerk of any other county, and if the judgment is for twenty-five dollars or upwards exclusive of costs, the same shall thereafter be a lien on the real property in the county where the same is filed and docketed of every person against whom the same is rendered, in like manner and to the same extent as in other actions for the recovery of money arising on contracts. When the action is tried and the judgment rendered in a court not of record, the justice of the court in which the action is tried, or other person authorized to furnish transcripts of judgments therein shall furnish the successful party a transcript thereof, who may file the same with the clerk of the county with whom the notice of lien is filed. The filing of such transcript shall have the same effect as the filing of transcripts of judgments rendered in such courts not of record. In all cases where the judgment is against the claimant or claimants the county clerk shall enter the word "discharged" under the last head in his lien docket.

Parties to actions to foreclose liens, etc. § 17. Any person or persons, firm or firms, corporation or association, filing a notice of lien, or the assignee of such person or persons, firm or firms, corporation or association, after the filing thereof, shall be the plaintiff in such action. The plaintiff must make the parties who have filed notice of liens against the property as well as those who have subsequent liens and claims by judgment, mortgage or conveyance, parties defendant. And as to all persons, firms, corporations or associations against whom no personal claim is made the plaintiff may, with the summons, serve a notice stating briefly the object of the action, and that no personal claim is made against it or them. And all persons, firms, corporations or associations who have filed notice of liens under this act shall by answer in such action set forth the same, and the court in which the action is brought may settle and determine the equities of all the parties thereto, and decide as to the extent, justice and priority of the claims of all parties to the action and upon every counter-claim or set-off alleged therein, to the extent of their respective jurisdictions. The provisions in this section in regard to making parties who have filed notices of liens against the property as well as those who have subsequent liens and claims by judgment, mortgage or conveyance, parties defendants shall not apply to proceedings to enforce liens instituted in courts not of record.

All claimants may join in action. § 18. Any persons, firms, corporations or associations claiming liens upon the same property may join in the same action, and when separate actions are commenced the court in which the first action was brought may, upon the application of the owner of the property, or of any part thereof, or of any party to either action, consolidate them. The provisions of this section shall not apply to actions commenced in courts not of record.

Offer to deposit money or securities, in discharge of lien; proceedings thereupon. § 19. At any time after an action is commenced, the owner or owners of the property affected may, in writing, offer to pay into court any amount stated in the offer, or to execute and deposit any securities or papers which he may describe, in discharge of the lien or liens. If the offer is accepted in writing within ten days

thereafter, the court in which the action is pending may make an order that on executing and depositing with the clerk of the county the amount offered or the securities or papers described, the lien or liens be discharged and the moneys or securities deposited take the place of the property upon which such lien or liens was or were created, and shall be subject to the same. In case the offer shall not be accepted within ten days, and the plaintiff fails to recover any more favorable judgment against the property, he shall pay any costs in the action incurred by the owner from the time of the offer.

Sub-contractors. § 20. All persons, firms, corporations or associations entitled to liens, under the provisions of this act, except those who contracted with the owner, shall be deemed sub-contractors, and the court in the judgment shall direct the amount due sub-contractors and workmen to be paid out of the proceeds of sales in their order of priority as herein provided before any part of such proceeds are paid to the contractors. In case of several buildings erected, altered or repaired under one contract, and of conflicting liens, each lienor shall have priority upon the particular building or premises where his labor is performed or his material used. Persons standing in equal degree, as co-laborers or various persons furnishing materials, shall have priority according to the date of filing their liens, provided, however, that in all cases workmen or laborers working for daily or weekly wages shall have preference over employers of labor, sub-contractors or contractors, without reference to the date when such workmen or laborers shall have filed their liens. Where several notices of liens are filed for the same demand, as in case of a contractor including claims for workmen to whom he is indebted, and the liens by the workmen, the judgment shall provide for the proper payment, in order of priority as herein provided, so that under the liens filed double payment shall not be required, and no payments voluntarily made upon any claim which has been filed as a lien, shall impair the lien of any person except the lien of the person so paid to the amount of such payment. [*Thus amended by L. 1887, ch. 420.*]

Priority of different liens to be settled. § 21. In every case in which different liens are asserted against property, the court in the judgment must declare the priority of each lien, and the proceeds of the sale of the property must be applied to each lien in the order of its priority.

When, by contract, property is to be received judgment may direct delivery. § 22. Whenever, by the terms of his contract, the owner has stipulated for the delivery of bills, notes or other obligations or securities, or of any other species of property in lieu of money, the judgment may direct that such substitute be delivered or deposited as the court may direct, and the property affected by the liens can only be directed to be sold in default of the owner to deliver said substitutes within such time as may be directed.

Judgment for deficiency on sale. § 23. Whenever, on the sale of property against which a notice of lien is filed as provided in the fourth section of this act, there is a deficiency of proceeds, judgment may be docketed for the deficiency against the persons, firms, corporations or associations named in the judgment as personally liable therefor, and therein adjudged to pay the same in like manner and with like effect as in actions for the foreclosure of mortgages. The provisions of this section shall not apply to actions commenced in courts not of record.

Lien how discharged; owner may notify claimant to proceed; security to discharge lien. § 24. A lien may be discharged as follows:

1. By filing a certificate of the claimant or his successor in interest, duly acknowledged or proved, stating that the lien is satisfied and may be discharged.
2. By depositing with the county clerk, if before the suit, of a sum of money equal to the amount claimed, with interest to the time of such deposit.
3. After the commencement of the action, by the deposit with the clerk of the county of such sum of money as in the judgment of the court, after due notice to all claimants or parties to the action, will be sufficient to pay any judgment which may be recovered against the property. In case the deposit of money is

made with the county clerk, as provided in subdivisions two and three of this section, the same shall be repaid by said clerk to the party making such deposit, or his assigns, upon the lien or liens being discharged by the claimants who have filed a notice or notices of lien or liens.

4. By the lapse of time. When one year has elapsed from the time of filing the notice of lien, and no action has been commenced either to enforce such claim or order of the court made continuing said lien, as provided in section six of this act.

5. By order of the court for neglect of the claimant to prosecute the same, as hereinafter provided. The owner of the property or of any part thereof affected by any notice of lien filed under this act, or the person or persons, firms, corporations or associations against whom the claim is made, may, at any time after the filing of the notice of lien, serve a notice in writing upon the claimant or any one of several claimants united in interest, or by leaving such notice at his last known place of residence, with some person of suitable age, with direction to deliver the same, requiring said claimant to commence an action to enforce the claim within the time to be specified in the notice, which shall not be less than thirty days from the time of such service; or to show cause at a special term of any court of record, at which a motion might be made in an action to enforce the lien or at a county court of the county in which the property is situated, at a time to be specified in such notice, why the notice of lien filed should not be vacated and cancelled of record. Thereupon, upon due proof of the service of said notice, and that no action has been commenced to enforce the claim, the court may make an order that the claim be vacated and cancelled of record.

6. By the owner of the premises, person or persons, firm or firms, corporations or associations against whom or which the notice of lien is filed, executing with two or more sufficient sureties, who shall be freeholders, a bond to the clerk of the county where the premises are situated, in such sum as the court may direct, not less than the amount claimed in said notice, conditioned for the payment of any judgment which may be rendered against the property. The sureties or said bond must justify in at least double the sum named in said bond. A copy of said bond, with a notice that the sureties will justify before the court or a judge thereof, at the time and place therein named, not less than five days thereafter, must be served on the claimant or his attorney. Upon the approval of said bond by the court or a judge thereof, an order discharging such lien may be made by the court or a judge thereof.

2 E. D. Smith, 535; 4 id., 734; 6 Abb. Pr., 99; 9 Daly, 238.

Act, how to be construed. § 25. This act is hereby declared to be a remedial statute and is to be construed liberally to secure the beneficial interests and purposes thereof; and a substantial compliance with its several provisions shall be sufficient for the validity of the lien, or liens hereinbefore provided for, and to give jurisdiction to the courts to enforce the same.

Laws repealed. § 26. Chapter one hundred and eighty-four of the laws of eighteen hundred and forty-six, chapter one hundred and sixty-nine of the laws of eighteen hundred and fifty-one, chapter three hundred and eighty-four of the laws of eighteen hundred and fifty-two, chapter four hundred and two of the laws of eighteen hundred and fifty-four, chapter six hundred and sixty-three of the laws of eighteen hundred and fifty-seven, chapter four hundred and seventy-eight of the laws of eighteen hundred and sixty-two, chapter five hundred of the laws of eighteen hundred and sixty-three, chapter three hundred and sixty-six of the laws of eighteen hundred and sixty-four, chapter seven hundred and seventy-eight of the laws of eighteen hundred and sixty-five, chapter five hundred and fifty-eight of the laws of eighteen hundred and sixty-nine, chapter one hundred and ninety-four of the laws of eighteen hundred and seventy, chapter four hundred and eighty-nine of the laws of eighteen hundred and seventy-three, chapter five hundred and fifty-one of the laws of eighteen hundred and seventy-four, chapter three hundred and seventy-nine of the laws of eighteen hundred and seventy-five,

chapters one hundred and forty-three and four hundred and eighty-six of the laws of eighteen hundred and eighty, sections eighteen hundred and seven to eighteen hundred and twenty-three inclusive of chapter four hundred and ten of the laws of eighteen hundred and eighty-two, sections eleven to twenty-seven inclusive of chapter two hundred and seventy-six of the laws of eighteen hundred and eighty-three and all acts amendatory of the above-mentioned acts or extending the provisions thereof, are hereby repealed. But this act shall not be so construed as to affect, enlarge, invalidate or defeat any lien or right to a lien now existing, or any proceeding to enforce such lien, now pending by virtue of any of the provisions of the acts hereby repealed, nor to revive any other or former acts or parts of act repealed by the acts hereby repealed.

6 N. Y. St. Rep., 212; 48 Hun, 17.

L. 1886, Chap. 382—An act to limit the operation and effect of chapter three hundred and forty-two of the laws of eighteen hundred and eighty-five, entitled "An act for the better security of mechanics, laborers and others who perform labor or furnish material for buildings and other improvements in the several cities and counties of this state, and to repeal certain acts and parts of acts."

Last preceding act not to impair rights accrued under repealed acts. SECTION 1. Chapter three hundred and forty-two of the laws of eighteen hundred and eighty-five, entitled "An act for the better security of mechanics, laborers, and others who perform labor or furnish material for buildings and other improvements in the several cities and counties of this state, and to repeal certain acts and parts of acts," shall not impair the validity of or affect any notice of lien made and filed prior to the twenty-seventh day of June, eighteen hundred and eighty-five, if such notice was made and filed in accordance with any act or acts of the legislature which were in force at the time of the passage of the act hereinbefore entitled, but such notice is and shall be held and regarded the same as if such prior act or acts were in force at the time such notice was filed, but shall be subordinate to liens notice of which were filed under said chapter three hundred and forty-two of the laws of eighteen hundred and eighty-five.

ARTICLE SECOND.

MECHANICS' LIENS ON PUBLIC WORKS IN CITIES.

L. 1878, Chap. 315—An act to secure the payment of laborers, mechanics, merchants, traders and persons furnishing materials toward the performing of any public work in the cities of the state of New York.

Liens for work or materials under municipal contracts. SECTION 1. Any person or persons who shall hereafter as laborer, mechanic, merchant or trader, in pursuance of, or in conformity with the terms of any contract made between any person or persons, and any incorporated city in the state of New York, perform any labor or furnish any material toward the performance or completion of any contract made with said city, on complying with the second section of this act, shall have a lien for the value of such labor or materials or either, upon the moneys in the control of the said city, due or to grow due under said contract with said city to the full value of such claim or demand, and these liens may be filed and become an absolute lien to the full and par value of all such work and materials, to the extent of the amount due or to grow due on said contract, in favor of every person or persons who shall be employed or furnish materials to the person or persons with whom the said contract with said city is made, or the sub-contractors of said person or persons, their assigns or legal representatives, provided that no city shall be required to pay a greater amount than the contract price or value of the work and the materials furnished, when no specific contract is made in the performance of said work by the contractor.

71 N. Y., 498; 99 N. Y., 666; 104 N. Y., 139.

Notice of claim; statement. § 2. At any time before the whole work to be performed by the contractor for the city is completed or accepted by the city, and within thirty days after the same is so completed or accepted, any claimant may file with the head of the department or bureau having charge of said work, and with the financial officer of said city, notices stating the residence of the claimant, verified by his oath or affirmation, stating the amount claimed, from whom due, and if not due when it will be due, giving the amount of the demand after deducting all just credits and offsets, with the name of the person by whom employed, or to whom materials were furnished; also a statement of the terms, time given, conditions of his contract, and also that the work was done or materials were furnished to the said contractor, and were actually performed or used in the execution and completion of the said contract with said city, but no variance as to the name of the contractor shall affect the validity of the said claim or lien.

Liens to be entered. § 3. The financial officer of said city shall enter the claims in a book kept for that purpose by him, called the "lien book." Such entry shall contain the name and residence of claimant, the name of the contractor, the amount and date of the filing and a brief designation of the contract upon which the claim is made.

Action to foreclose lien. § 4. No lien provided for in this act shall be binding upon the property therein described, unless an action be commenced within ninety days from the filing of the same, and a notice of pendency of said action be filed with the financial officer of the city.

When lien attaches. § 5. The lien shall attach from the time of filing thereof to the extent of the liability of the contractor for the claim preferred upon any funds which may be due or to grow due to the said contractor from said city, under the contract against which the lien is filed.

Enforcing claim; jurisdiction. § 6. Any claimant who has filed the notice mentioned in the second section of this act, may enforce his claim against the said fund therein designated and against the person or persons liable for the debt by a civil action. Actions to determine or terminate said liens may be commenced by the contractor or said city in any court of competent jurisdiction.

Parties; priority of claims. § 7. The plaintiff must make all parties who have filed claims the contractor, and the said city, parties defendant, and as to all parties against whom no personal claim is made, the plaintiff may, with the summons, serve a notice stating briefly the object of action, and that no personal claim is made. But all parties who have filed claims under this act may, by answer in such action, set forth the same, and the court in which the action is brought, may decide as to the extent, justice and priority of the claims of all parties to the action.

Judgment in action to foreclose; execution. § 8. The court in which the action is brought shall determine the validity of the lien, the amount due from the debtor to the contractor under his contract, and from the contractor to the respective claimants, and shall render judgment, directing that the said city shall pay over to the claimants, for work done and materials furnished in the execution of the said contract or contracts, whose claims or liens it shall hold to be valid and just, in the order of their priority as determined by said court to the extent of the sum found due to said claimants from their contractor, so much of said funds or money which may be due from the said city to the contractor, under his contract, against which the lien is filed, as will satisfy their liens or claims, with interest and costs, to the extent of the amount due from said city to said contractor. The judgments rendered under this act may be enforced by execution, and an appeal may be taken therefrom in the same time and manner as in civil actions.

Successive liens. § 9. In case of successive liens, or a number of liens, in favor of different persons, their rights and priorities shall be determined as follows: Persons standing in equal degrees as co-laborers, or various persons furnishing materials shall have priority according to the date of the filing of their liens.

When several lien notices are filed for the same demand, the judgment shall provide for the proper payments according to priority, so that, under liens filed double payments shall not be required.

Consolidating actions. § 10. When separate actions are commenced, the court in which the first action was brought may, upon the application of the said city, consolidate them.

Costs. § 11. Costs in all actions shall rest in the discretion of the court, and shall be awarded to or against the plaintiff or defendants, or any or either of them, as may be just.

Personal actions. § 12. Nothing contained in this act shall be construed to impair or affect the right of any person to whom any debt may be due for work done or materials furnished to maintain a personal action to recover such debt against the person liable therefor.

Discharging lien. § 13. The lien may be discharged as follows: First. By filing a certificate of the claimant, or his successor in interest, duly acknowledged and proved, stating that the lien is discharged. Second. By lapse of time when ninety days have elapsed since the filing of the claim, and no action shall have been commenced to enforce the claim. Third. By satisfaction of any judgment that may be rendered in actions to foreclose said liens or claims.

Definition. § 14. The term "contractor," as used in this act, shall be construed as meaning the person with whom the contract with the said city is made, his assigns or legal representatives.

When act to take effect. § 15. This act shall take effect immediately; but nothing herein contained shall affect the validity of any claims or liens upon moneys due or to grow due under contracts made by cities prior to its passage. All acts and parts of acts inconsistent with the terms of this act are hereby repealed.

In what cases act to apply. § 16. This act shall apply to and include all cases and contracts under which work and materials have heretofore been, or shall hereafter be done and furnished upon any land, the title of which was, at the time of the making of the contract, and now is in any city, and for the performance of which appropriations have been, or shall hereafter be made and raised by any city; and shall apply to and include actions now pending for work done and materials furnished under any such contract. [*Added by L. 1881, ch. 429.*]

7 Hun, 73; 6 Abb., N. S., 428; 37 How. Pr. R., 499; 47 N. Y., 666; 4 Hun, 795; 66 N. Y., 1.

ARTICLE THIRD.

GENERAL AND MISCELLANEOUS PROVISIONS RELATING TO MECHANICS' AND LABORERS' LIENS.

L. 1870, Chap. 529 — An act in relation to mechanics' liens.*

Lien laws extended to railroad bridges. SECTION 1. The provisions of the laws relating to mechanics' liens heretofore passed shall apply to bridges and trestle work erected for railroads and materials furnished therefor, and labor performed in constructing said bridges, trestle work and other structures connected therewith, and the time within which said liens may be filed shall be extended to ninety days from the time when the last work shall have been performed on said bridges, trestle work and structures connected therewith, or the time from which said materials shall have been delivered. This act shall apply to all uncompleted work commenced previous to the passage of this act.

1 Sheld., 525; 42 Hun, 53.

L. 1872, Chap. 669 — An act in relation to mechanics' liens.*

Provisions of law relative to mechanics' liens to apply to wharves, piers, etc.; to apply to incomplete work. SECTION 1. All the provisions of the laws relating to mechanics' liens heretofore passed shall apply to wharves, piers, bulkheads and bridges and materials furnished therefor, and labor performed in constructing said wharves,

* Partly, if not wholly, repealed by L. 1886, ch. 342, § 26, *ante*, p. 2700.

piers, bulkheads and bridges and other structures connected therewith, and the time within which said liens may be filed shall be thirty days from the time when the last work shall have been performed on said wharves, piers, bulkheads and bridges and structures connected therewith, or the time from which said materials shall have been delivered. This act shall apply to all incomplete work commenced previous to the passage of this act.

6 Daly, 284; 67 N. Y., 149.

L. 1875, Chap. 392—An act for the better security of railroad employees for labor performed.

Lien for labor on railroads. SECTION 1. Any person who shall hereafter perform any labor for a railroad corporation shall, on filing with the county clerk of any county in which such railroad corporation is situated, or through which the road of such corporation passes, the notice prescribed by the second section of this act, have a lien for the value of such labor upon such railroad track, rolling stock and appurtenances, and upon the land upon which such railroad track and appurtenances are situated, to the extent of the right, title and interest of such railroad corporation in the property existing at the time of filing the said notice.

42 Hun, 53.

Notice to be filed. § 2. Within thirty days after the performance and completion of such labor, such person shall file a notice, in writing, with the county clerk of the county where the property is located, specifying the amount of claim, and the corporation against whom the claim is made. The county clerk shall enter the particulars of such notice in a book to be kept in his office, to be called the "lien docket," with the name of claimant, amount claimed, the name of such corporation against which such claim is made, and the date of the filing of the notice, hour and minute. A fee of ten cents shall be paid to said clerk on filing such lien, and said notice, when so filed, shall thereafter operate as an incumbrance upon said property.

Evidence of claim. § 3. Any person performing labor, in availing himself of the provisions of this act, shall upon the trial, or at the assessment of damages, produce evidence to establish the value of such labor, and that the same was performed for such railroad corporation.

Action to enforce lien. § 4. Any laborer, performing any work, or assignee thereof, may, after such labor is performed, and the service of the notice required by the first section of this act, bring an action in any of the courts of the county in which said property is situated to enforce said lien, requiring such railroad corporation to appear, by attorney, within thirty days after such service and answer the same, or, in default thereof, the claimant may take judgment for the amount of claim and costs.

Duration of lien. § 5. Every lien created under the provisions of this act shall continue until the expiration of one year, unless sooner discharged by the court or some legal act of the claimant in the proceedings; but when a judgment is entered therein, and docketed with the county clerk within said year, it shall be a lien upon the real property of the railroad corporation against whom it is obtained, to the extent that other judgments are now made a lien thereon.

Priority of lien. § 6. The liens created and established by virtue of the provisions of this act shall be paid and settled according to the priority of the notice filed with the county clerk, as directed by the second section hereof.

Discharge. § 7. All liens created by this act may be discharged as follows:

1. By filing with the county clerk a certificate of the claimant, or his successors in interest, acknowledged or proved in the same manner as a conveyance of real estate, stating that the lien has been paid or discharged; or

2. By depositing with the court or clerk of the court a sum of money equal to double the amount claimed, which money shall be thereupon held subject to the determination of the lien; or

3. By an entry of the county clerk, made in the book of liens, that the proceedings on the part of the claimant have been dismissed by the court in which it is brought, or a judgment rendered against the said claimant; or

4. By an affidavit of the service of a notice from such railroad corporation, or its attorney, to the claimant, requiring such claimant to commence an action for the enforcement of such lien within twenty days after service of said notice, and the failure of said claimant to commence an action as aforesaid.

Stockholders liable. § 8. Each and all the stockholders of such corporation shall be jointly and severally liable for the debts due or owing to any of its laborers or servants, other than contractors for personal service for ninety days' service, or less than ninety days' service, performed for such corporation, but shall not be liable to an action therefor, before an execution shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such execution shall be the amount recoverable with costs against such stockholders, before such laborer or servant shall charge such stockholders for such ninety days' service, or less than ninety days' service, he shall give notice in writing, within twenty days after the performance of such service, that he intends to so hold him liable, and shall commence such action therefor within thirty days after the return of such execution unsatisfied, as above mentioned; and every such stockholder against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in such corporation in ratable proportion to the amount of the stock they shall respectively hold with himself.

L. 1880, Chap. 440—An act to provide for the protection of mechanics and others.

Oil wells, persons performing labor to have lien on. SECTION 1. Any person who shall hereafter perform any labor in or about the sinking, drilling or completing of any oil well, or any well sunk or drilled for oil, or gas, or other volatile or mineral substances, within the state of New York, or in sinking or drilling any water well, sunk or drilled for the purpose of drilling or operating any such oil well or other well as aforesaid, or who shall erect, build or furnish any tank or other receptacle for oil, gas or water which shall be built, erected or furnished for any of the purposes aforesaid, or who shall perform any labor, or furnish any materials in or for the building or erecting of such tank or other such receptacle as aforesaid, or who shall furnish any materials for any of the purposes aforesaid, including tubing, casing, sucker-rods, packers or other appurtenances or appliances to any such well as aforesaid, with the consent of the owner, being such owner as in this section hereinafter described, shall, on filing with the county clerk of the county in which the property is situated, the notice prescribed by the next section of this act, have a lien for the value of such labor and materials upon such tank or other receptacle as aforesaid, and upon such well as aforesaid, and appurtenances, and upon the lot, premises, parcel or farm of land upon which the same shall be situated, to the extent of the right, title and interest of the owner of the property, whether owner in fee or of a less estate, or whether lessee for a term of years thereafter, or vendee in possession under a contract existing at the time of the filing of said notice, or any right, title or interest in real estate against which an execution at law may now be issued under the provisions of the statutes in force in this state, relating to liens of judgment and the enforcement thereof.

27 Hun, 375; 35 Hun, 181.

Filing of notice; county clerk to make entry. § 2. Within sixty days after the performance and completion of such labor or the final furnishing of such materials, the contractor, sub-contractor, laborer or person furnishing the same, shall file a notice in writing in the office of the clerk of the county where the property is located, specifying the amount of the claim and the person against whom the claim is made, the name of the owner or of the party in interest as aforesaid of

the premises, lot, parcel or farm of land, together with a description of said lot, parcel or farm of land. The county clerk shall enter the particulars of such notice in a book to be kept in his office to be called the "lien docket," which shall be suitably ruled in columns headed "claimants," "against whom claimed," "owners and parties in interest," "amount claimed," and the date of the filing of the notice, hour and minute, what proceedings have been had, the names of the owners and parties in interest and the person against whom the claim is made shall be entered in said book in alphabetical order. A fee of ten cents shall be paid to said clerk on filing said notice, and no lien shall attach to said land, well, tank or other receptacle or appurtenances or appliances, unless said notice shall be filed by said clerk, and when so filed said notice shall thereafter operate as an incumbrance upon said property.

Labor performed or materials furnished on credit of contractor. § 3. Whenever the labor performed or materials furnished shall be upon the credit of any contractor who shall have made a contract therefor with the owner of the property, or such party in interest as aforesaid, whether such contract shall be oral or in writing, or express or implied, or for any specified sum or otherwise, or on the credit of any sub-contractor or the assignee of any contractor or sub-contractor, the provisions of this act shall not oblige the owner or party in interest as aforesaid, to pay for or on account of any such labor or materials, any greater sum or amount than the price stipulated and agreed to be paid therefor by said contract, or the value of such labor and materials except as in the next section provided.

Service of notice of claim; non-service of notice; payments to avoid provisions of act. § 4. At the time of the filing of said notice prescribed by the second section of this act, the person filing said notice may serve upon the said owner, or party in interest as aforesaid, a written notice specifying the amount of the claim, the name of the person against whom the claim is made, and for what labor or materials the claim is made, which said notice shall be served, by delivering the same to such owner or party in interest as aforesaid personally, or if there shall be two or more of such owners or parties in interest, to either or any one of them, or in case said owner or party in interest shall have no place of residence within the county where such property as aforesaid shall be situated, then by mailing said notice to said owner or party in interest, securely inclosed in a sealed envelope directed to said owner or party in interest at his post-office address, with the postage prepaid thereon, and from the time of the service of such notice as aforesaid, such owner or party in interest shall be liable to said claimant to the amount then due or owing to the contractor, sub-contractor or assignee of such contractor or sub-contractor, upon whose credit such labor shall be performed or materials furnished as hereinbefore provided. And in any case whether the notice above prescribed shall or shall not be served as above provided upon such owner or party in interest as aforesaid, if such owner or party in interest as aforesaid shall pay or cause to be paid, to any contractor, sub-contractor or assignee, or any other person, any money or other valuable thing for the purpose of avoiding or with intent to avoid any of the provisions of this act, when the amount still due or to grow due to said contractor, sub-contractor or assignee shall be insufficient to satisfy the demands made in conformity with the provisions of this act, the owner or other party in interest as aforesaid shall be liable to the amount that would have been due or owing to said contractor, sub-contractor or assignee, at the time of the filing of the notice in the second section of this act, in the same manner as if no such payment had been made.

Action to enforce lien. § 5. Any contractor, sub-contractor, mechanic, laborer, or other person performing any work or furnishing any materials as above provided, or the assignee of any such person or persons, may, after such labor has been performed or materials furnished, and the filing of the notice provided by the second section of this act, when the amount of the claim exceeds fifty dollars, bring an action in the supreme court in the county in which the property is situated, or in the county court of said county, to enforce such lien, which action shall be commenced, and the proceedings therein conducted, and judgment entered in the

same manner and to the same effect as in actions brought in said courts to enforce liens, provided by chapter four hundred and two of the laws of eighteen hundred and fifty-four, and the several acts amending the same, and the said courts shall have full power to adjust and enforce all the rights and equities between any or all of the parties to such actions, and enforce or protect the same by any of the remedies usual in said courts.

Id., in justice's court. § 6. When the amount of the lien claimed is two hundred dollars or under, the claimant may commence his action in a justice's court of the town or city in which the premises are located, which action shall be commenced, and the proceedings therein conducted and the judgment entered, and transcript filed in the same manner and with the effect as in actions commenced in justices' courts to enforce liens pursuant to said chapter four hundred and two of the laws of eighteen hundred and fifty-four, and the several acts amending the same.

Costs and disbursements. § 7. Costs and disbursements, in actions to enforce liens provided for by this act, shall be allowed to either party upon the principles and by the same rules as are now allowed by law in actions for relief arising on contract, and shall be included in the judgment recovered therein, and the expenses incurred in serving the notice by which such actions shall be commenced by publication may be allowed in justices' courts and added to the amount of costs now allowed in said courts. When the action is brought in the supreme court or in a county court, such direction shall be made in the discretion of the court as to the payment of costs as shall be just and equitable, and the judgment entered shall specify to whom and by whom the costs are to be paid.

Filing of transcript of judgment; lien against real property. § 8. A transcript of every judgment rendered under this act shall be furnished by the clerk of the county where rendered and docketed to the successful party, who may file the same with the county clerk of any other county, and the same shall thereafter be a lien on the real property in the county, where the same is filed and docketed, of every person against whom the same is rendered, if for twenty-five dollars or upwards, exclusive of costs, in like manner and to the same extent and enforceable by execution in the same manner, as in other actions for the recovery of money arising on contract.

Execution. § 9. Whenever any judgment shall be entered in any such action as aforesaid, execution shall thereupon issue for the enforcement and collection of such judgment in the same manner as executions are issued upon other judgments in actions on contract for the payment of money only, except that when the judgment is in favor of the claimant the execution shall direct the officer to sell the right, title and interest which the owner or other party in interest had in the premises at the time of filing the notice prescribed by the second section of this act, and if the same shall be insufficient to satisfy said judgment, then to collect such deficiency as shall remain out of the personal property of such owner or party in interest, or if there be two or more of either of them, or if sufficient personal property cannot be found, then out of the real property of such owner or party in interest, or if there be two or more, of either of them, in the county to which said execution is issued, on the day such judgment was docketed in said county, or on any day thereafter. But no such deficiency shall be collected out of any real property, unless such deficiency shall amount to or exceed the sum of twenty-five dollars.

Continuance of lien. § 10. Every lien created under the provisions of this act shall continue until the expiration of six months from the time of filing the notice prescribed in the second section of this act, unless sooner discharged by the court or some legal act of the claimant in the proceedings; but if within such period of six months proceedings are commenced to enforce or foreclose such lien, then such lien shall continue until judgment shall be rendered thereon, and for one year thereafter such lien shall also continue during the pendency of an appeal and for one year after the determination thereof. When a judgment is rendered as aforesaid it may be docketed in any county of this state and enforced as if obtained in an action in a court of record.

Appeals. § 11. Appeals from judgments rendered pursuant to this act may be taken by either party in the same manner, within the same time, and subject to the same rules and course of procedure as in appeals taken in civil actions arising on contract, and with like costs and disbursements, and the judgment thereon shall be enforced as judgments on appeal are now enforced and collected. Such appeal shall be had and taken only in the proceeding or action wherein judgment shall be given or rendered, but such appeal shall not operate as a stay of proceedings or in any manner to affect the foreclosure or action of any other claimant or claimants then pending.

Priority. § 12. The liens created by virtue of the provisions of this act shall be paid and settled according to priority of notice filed with the county clerk as directed by the second section of this act.

How discharged. § 13. All liens created by this act may be discharged as follows: First, by filing with the county clerk a certificate of the claimant or his successor in interest, acknowledged or proved in the same manner as a conveyance of real estate, stating that the lien has been paid or discharged; second, by depositing with the justice before whom, or the clerk of the court in which proceedings shall be commenced to enforce or foreclose said lien, a sum of money equal to double the amount claimed, which money shall thereupon be held subject to the determination of such proceedings; or, third, by an entry of the county clerk made in the book of liens that the proceedings on the part of the claimant have been dismissed by the court or a judgment rendered against the said claimant.

L. 1888, Chap. 543 — An act for the protection of dealers in monuments, gravestones, inclosures or other structures in cemeteries.

Persons furnishing may have lien on monuments, etc.; notice to be filed with cemetery superintendent; his duty. SECTION 1. Every person, firm, corporation or association that shall hereafter furnish or place in any cemetery or burial ground within this state, any monument, gravestone, inclosure or other structure, shall have a lien upon such monument, gravestone, inclosure or other structure, for the principal and interest of agreed prices thereof, or such portion of the said price as shall remain unpaid until the same be paid in full, provided such person, firm, corporation or association, shall at any time, or within one year after the bill for the same becomes due, file with the superintendent or person in charge of such cemetery or burial ground a notice in writing to the effect that the person or firm, corporation or association so furnishing such monument, gravestone, inclosure or other structure claims a lien on the same for the purchase-price thereof, or such portion of the purchase-price thereof as remains unpaid with interest, which notice shall also contain a description of the monument, gravestone, inclosure or other structure so furnished, and the names of the person or persons with whom the agreement for the purchase and erection of the same was made, the amount agreed to be paid therefor, and the amount unpaid, and for which a lien is claimed, together with the boundaries of the plot upon which such erections stand, and shall be signed by the person, firm or corporation, or association claiming said lien, and be verified by the oath of the claimant or his agent. It shall be the duty of the superintendent or person in charge of any cemetery or burial ground, with whom any such notice shall be filed, to forthwith notify the owner or owners of the plot so described in said notice, of the filing of said notice of lien.

If payment not made, monument, etc., may be removed and sold; application of proceeds, etc. § 2. In case the amount due be not paid within six months after the service of said notice on the plot owner as hereinbefore provided, the said person, firm, corporation or association so claiming such liens shall thereafter and within sixty days have the right on ten days' notice to the superintendent or person in charge of the cemetery or burial ground of his or its election so to do, to remove from said burial ground the said monument, gravestone, inclosure or other structure to the outside of the grounds of said cemetery or burial ground, and after the same shall

be so removed such person, firm, corporation or association shall immediately give notice in two newspapers published in the county in which said cemetery or burial ground is situated, that on a day and at an hour named therein, which shall not be less than ten nor more than fifteen days from the date thereof, said monument, gravestone, inclosure or other structure will be sold at public auction to the highest bidder to satisfy said lien, which notice shall be signed by the person, firm, corporation or association claiming it, and a copy thereof shall forthwith be served personally on or mailed to the person or persons with whom such agreement was made for such monument, gravestone, inclosure or other structure. Immediately after such sale, said firm, corporation or association so making such sale, shall, out of the proceeds thereof, first pay the expenses of said sale, and of the removal of the said monument, gravestone, inclosure, or other structure from said plot, which expense shall not exceed the sum of fifty dollars in the case of a monument, or of ten dollars in the case of a gravestone or fence inclosure, and shall next pay and retain thereout the amount due upon said lien for principal and interest, and the balance, if any, shall be paid forthwith to the person or persons with whom the agreement was made for such monument, gravestone, inclosure or other structure. Nothing, however, in this act contained, shall be so construed as to create any liability upon the part of any cemetery association or officer thereof on account of the performance or non-performance of any of the provisions of this act; but no cemetery corporation or officer thereof, or of any burial ground, after notice of the lien has been served upon them, shall in any way hinder or obstruct the removal of such monument, gravestone, inclosure or other structure by the lienor or his employees; nor, after such notice of lien, permit any alteration to be made or inscription to be placed thereon or permit the person or persons with whom the agreement was made, or any one claiming under them, to remove any such monument, gravestone, inclosure or other structure from such cemetery or burial ground without the consent of the lienor.

Repeal. § 3. All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

TITLE IX.

TITLE 9.

Of Proceedings for the Recovery of Rent and of demised Premises.

[500-506]

[Repealed by L. 1880, ch. 245.]

TITLE X.

TITLE 10.

Summary Proceedings to recover Land in certain Cases.

[507-516]

[Repealed by L. 1880, ch. 245.]

L. 1882, Chap. 303—An act in relation to summary proceedings to remove monthly tenants in the city of New York for holding over.

Notice to monthly tenant to be given before proceedings for removal can be taken.
SECTION 1. No monthly tenant shall hereafter be removed from any lands or tenements in the city of New York on the grounds of holding over his term (except when the same expires on the first day of May), unless at least five days before the expiration of the term the landlord or his agent serves upon the tenant, in the same manner in which a summons in summary proceedings is now allowed to be served by law, a notice in writing to the effect that the landlord elects to terminate the tenancy, and that, unless the tenant removes from said premises on the day on which his term expires, the landlord will commence summary proceedings under the statute to remove such tenant therefrom.

TITLE 17.

TITLE XVII.

[550] *General miscellaneous Provisions concerning Suits and Proceedings in civil Cases.*

Sec. 1-26. [Repealed.]

27. Majority of officers, etc., may act upon meeting of all.

28, 29 & 30. Proceedings to collect surplus arising from sale of taxes, paid to supervisor.

31. [Repealed.]

32. Attachments against sheriffs neglecting to return certain warrants.

33 & 34. [Repealed.]

35. Judgments rendered before division of a county, how executed.

36-46. [Repealed.]

[551-555] [Sections 1-26 were repealed by L. 1877, ch. 417, and L. 1880, ch. 245.]

Majority
may act.

§ 27. Whenever any power, authority or duty is confided by law to three persons, and whenever three or more persons or officers are authorized or required by law to perform any act, such act may be done and such power, authority or duty may be exercised and performed by a majority of such persons or officers upon a meeting of all the persons or officers so entrusted or empowered, unless special provision is otherwise made, and whenever a duty has been or shall be enjoined by law upon three or more persons or officers, and one

or more of them shall have died, or have become mentally incapacitated to act, or shall refuse or neglect to attend a meeting of such persons upon reasonable personal notice thereof, then the action of a majority of the whole number appointed shall be binding and effective for all the purposes for which they were appointed, unless special provision is otherwise made in existing laws. [*Thus amended by L. 1874, ch. 321.*]

TITLE 17.

Proviso.

30 N. Y., 173; 12 id., 156, 190; 11 id., 571; 2 id., 376; 16 id., 294; 30 Barb., 347; 23 id., 179, 310; 23 id., 139, 400; 4 Denio, 126; 21 Wend., 173, 211; 14 How. Pr. R., 306; 25 N. Y., 228; 7 Cow., 526; 6 Johns. R., 59; 2 Abb. Pr., 436; 6 How. Pr. R., 175; 38 Hun, 284; 30 Hun, 209; 39 Hun, 502; 99 N. Y., 676.

§ 28. Whenever a surplus arising from the sale of any property distrained for taxes, paid over to the supervisor of a town, shall be claimed by any other than the person for whose tax such property was sold, and such claim shall be contested by such person, such claimant shall be entitled to maintain an action against such person; and the person for whose tax such property was sold, may also maintain such action against such claimant, as for money had and received; in which the right of the respective parties to such surplus, shall be tried and determined.

Surplus of tax sales paid to supervisor.

§ 29. For the purposes of such action, the defendant shall be deemed to be in possession of the surplus in the hands of the supervisor. Upon a certified copy of the final judgment that shall have been rendered in favor of either party, being produced to the supervisor, in whose hands such surplus shall be, he shall pay over the same to the party so recovering. And no supervisor shall be liable to any action in favor of any claimant of such surplus, the right of which shall be contested as provided in the fourth section of the third title of chapter thirteen of the first part of the Revised Statutes, until he shall have refused to pay over such surplus upon the production of a judgment as aforesaid.

Duty of supervisor.

§ 30. In any action brought pursuant to the two last preceding sections, no other cause of action shall be joined, nor shall any set-off be allowed; and if an execution issue on a judgment so rendered, it shall direct the costs only of such judgment to be levied thereon.

Judgment and execution, &c.

[Section 31 was repealed by L. 1877, ch. 417.]

§ 32. Whenever any sheriff shall have neglected to return any warrant issued by a county treasurer, against any collector, or any warrant issued by the comptroller, against any collector of canal tolls, or shall have made any other return than that required by law, he shall be proceeded against in the supreme court, by attachment, for his neglect, in the same manner and with the like effect, as for neglecting to return any execution in a civil suit; and the proceedings thereon shall be the same in all respects.

Attachments against sheriffs in certain cases.

[Sections 33 and 34 were repealed by L. 1877, ch. 417.]

§ 35. Where any county has been or shall be divided, any judgment that may have been recovered previous to such division, or after such division upon any proceedings instituted previous thereto, in the court of common pleas of such county, or before any justice of the peace thereof, may be collected by execution to be issued to the sheriff of the county where such judgment shall have been

[556]

Judgments before a division of a county.

TITLE 17.

rendered, or to a constable thereof, as the case may require, who shall execute the same, in the same manner as if such division had not been made; and such judgments may be revived, and the like proceedings may be had thereon, as if such county had not been divided.

[557-558] [Sections 36-46 were repealed by L. 1877, ch. 417, and L. 1880, ch. 245.]

L. 1874, Chap. 656 — An act relating to the publication of judicial proceedings and legal notices in New York city and county.

[See Code of Civil Procedure, § 3340.]

Calendars of courts of record, journal to be designated for publication of; legal notices, publication of; proviso. SECTION 1. The presiding justice of the supreme court of the first judicial department, the chief judge of the court of common pleas in and for the city and county of New York, the chief judge of the superior court of the city of New York, and the chief justice of the marine court of the city of New York, or a majority of them, shall designate a daily law journal, published in said city, in which shall be published all calendars of the courts of record held in and for said city and county, which calendars shall contain the numbers and titles of the causes and names of the attorneys appearing therein, with such particulars and notices in respect to such calendars, or the causes thereon, as may be specified by the clerks of said courts respectively, under the order of said courts, together with every notice or advertisement in legal proceedings which may be required by law to be published in one or more papers in said city or county. If such notice or advertisement is required to be published in only one paper, then such publication shall be made in said paper; but if such notice or advertisement is required to be published in more than one paper, then one of such requisite papers shall be the paper so designated; provided, that nothing herein contained shall be held to apply to or authorize or require any advertisement to be inserted in the journal to be designated as aforesaid which is directed by law or ordinance to be advertised or inserted in the "City Record" the official paper of the mayor, aldermen and commonalty of the city of New York, nor to require the publication of any advertisements, notices, reports or statements now under the direction or control of any officer of the state government, in such paper, provided, that no greater sum shall be paid per folio than that now allowed by law.

Publication of calendars, expenses of, how paid, and amount of. § 2. The expenses of the publication of calendars, directed to be made by the first section of this act, for each of the courts therein named shall be paid in the same manner as the expense of printing and stationery for the use of said courts are now or shall hereafter be paid, and the amounts necessary for such payments, which shall not exceed, in the aggregate, more than fifteen thousand dollars per annum, shall be appropriated in the same manner as appropriations are now made, or shall hereafter be provided by law to be made, for the expenses of said courts; provided, that no greater sum shall be paid per folio than that now allowed by law, and, provided further, that not more than ten dollars per annum shall be charged to each annual subscriber therefor.

L. 1876, Chap. 11 — An act in relation to posting notices and papers in the county of Erie.

[See Code Civil Procedure, § 3340.]

Notices and papers, posting of. SECTION 1. As soon as the new city and county hall which is now being erected in the city of Buffalo, is occupied by the principal

county officers and the county courts of said county, it shall be a sufficient posting of all notices and papers now required by law to be posted on the outer door of the court-house in said county, that the same be posted upon bulletin boards to be placed in the vestibule of said city and county hall.

L. 1881, Chap. 654 — An act to grant relief to the sureties of trustees, committees and guardians appointed by or accountable to the supreme or to any county court of the state.

Sureties may be relieved from further liability. SECTION 1. The surety or sureties of any trustee, committee or guardian appointed by or accountable to the supreme court may by said court at special term, on good cause shown, be relieved from liability as surety or sureties for the acts or omissions of the trustees, committee or guardian occurring after the date of the order relieving the surety or sureties. And the surety or sureties of any trustee, committee or guardian appointed by, or accountable to, a county court shall, by said court, on good cause shown, be relieved from liability as surety or sureties for the acts or omissions of the trustee, committee or guardian occurring after the date of the order relieving the surety or sureties, upon the following conditions.

Application for relief, how made. § 2. Application for such relief may be made by any surety or sureties or his or their representatives, upon a verified petition, setting forth the particulars of the trust, the names and residence of all persons interested in the trust, and if they are under age, the age of such, and the reason for seeking relief. The petition may be supported by additional proof.

Notice of. § 3. At least ten days' notice of the time when, and the court at which, the petition will be presented, with a copy of the petition and proofs in support thereof, shall be personally served upon the trustee, committee or guardian, and upon all persons interested in the trust, except persons residing out of the state, and upon such persons the notice and the manner in which it shall be given shall be prescribed by the court in each case.

Accounting. § 4. If sufficient cause be shown, the trustee, committee or guardian shall be ordered to account before the court or a referee, and upon the trust fund or estate being found, or made good and paid over or properly secured the surety or sureties shall be discharged.

New security. § 5. The court may require the trustee, committee or guardian to give new security as upon his or their appointment as now provided by law for the faithful discharge of his duties, and in case of failure so to do, discharge such trustees, committee or guardian and appoint a new one.

Injunction pending proceedings. § 6. The court in which the proceedings are instituted, or a judge or justice thereof, may, by order, restrain the trustee, committee or guardian from acting pending proceedings, upon it being made to appear to the satisfaction of such court, judge or justice, that the rights of any party are endangered, or about to be endangered, by such trustee, committee or guardian.

Where proceedings had. § 7. Proceedings under this act in the supreme court shall be had in the judicial district in which the trustee, committee or guardian resides; or, if there be more than one trustee, committee or guardian, in the judicial district in which some one of them resides. Proceeding in a county court shall be had in the county in which the trustee, committee or guardian was appointed.

[See L. 1887, ch. 372, *ante*, p. 401, requiring bonds of officers, trustees, etc., to be recorded.]

GENERAL INDEX

TO THE

EIGHTH EDITION OF THE REVISED STATUTES.

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